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Letter dated 17 November 2009 from the Secretary-General addressed to the President of the Security Council

I have the honour to transmit the report of the African Union High-Level Panel on Darfur (annex I), a communiqué of 29 October 2009 adopted by the African Union Peace and Security Council (annex II) and a letter dated 3 November 2009 from Mr. Jean Ping, Chairperson of the African Union Commission (annex III), requesting that these documents be submitted to the Security Council.

I should be grateful if you would bring the attached documents to the attention of the members of the Security Council.

BAN Ki-moon

Please recycle

Annex I

Report of the African Union High-Level Panel on Darfur

[Original: Arabic, English and French]

Introductory note by the Chairperson of the Commission

I wish to recall that, in line with the decision adopted by the Peace and Security Council (PSC) at its 142nd meeting held on 21 July 2008, calling for the formation of an AU High-Level Panel on Darfur (AUPD), I appointed several eminent African personalities as members of the AUPD. The PSC decision was subsequently endorsed by the 12th Ordinary Session of the Assembly of the Union held from 1 to 3 February 2009.

The AUPD, which is chaired by former President Thabo Mbeki of South Africa, was mandated to examine the situation in Darfur in-depth and submit recommendations on how best to effectively and comprehensively address the issues of accountability and combating impunity, on the one hand, and peace, healing and reconciliation, on the other. In this context, the AUPD convened its inaugural meeting in Addis Ababa on 18 and 19 March 2009. This inaugural meeting was followed by wide consultations with both the Sudanese and international stakeholders.

The Panel completed its work early this month and formally submitted its report to me on 8 October 2009.

The Commission fully associates itself with the recommendations contained in the report and believes that they provide a clear roadmap on how best the interrelated issues of peace, justice, reconciliation and healing could be addressed in Darfur, thereby contributing to the overall objective of promoting sustainable peace and stability in the Sudan. It is my earnest hope that the PSC will seize the opportunity of the consideration of the report to further enhance Africa's leadership in guiding the international community's efforts to help Sudan and the Sudanese people attain peace, security, reconciliation and justice.

Darfur

The Quest for Peace, Justice and Reconciliation

Report of the African Union High-Level Panel on Darfur
October 2009

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"We want peace. If it is flying in the air, I am prepared to fly and catch it. If it is buried underground, I am prepared to dig to get it. If it is available in the market, I will find the money to buy it."

A nomad who spoke with the Panel in El Fasher, North Darfur, on 20 June 2009.

We are the children who suffered from the war
We are the children who did not come across playing
We are those who fed on fear and raids
We are the souls that covered the heart's hopes
Our destiny was born in the time of injustices and fires
Our destiny is to lose tranquillity,
the family,
the home
and friend
We had no hand in what happened, we do not side with any party
Our hope is for peace to come back to the area
We say to everybody carrying arms:
"We beg you in Allah's name to put down your arms if you care for us because the arms only brought destruction, we lost home and mother
If you side with the children, we are the children, let peace join us."

A group of children the Panel met in Nyala, South Darfur, on 21 June 2009.

LETTER OF TRANSMITTAL

Mr. Chairperson,

Following the decision taken by the Peace and Security Council (PSC) of the African Union, at its 142nd meeting held at ministerial level, on 21 July 2008, and subsequently reaffirmed by the decision of the 12th Ordinary Session of the Assembly of the African Union held in Addis Ababa on 1-3 February 2009, you appointed us to serve as members of the independent African Union High-Level Panel on Darfur.

The mandate you entrusted us with required us to examine the situation in Darfur and submit recommendations on how best the issues of accountability and combating impunity, on the one hand, and reconciliation and healing, on the other, could be effectively and comprehensively addressed. In addition, as the PSC itself understood, these objectives cannot be achieved outside the context of the realisation of the goal of peace.

We have the honour to submit to you our unanimous Report, entitled *Darfur: The Quest for Peace, Justice and Reconciliation*.

It was a privilege for us to have been asked to undertake this important and historic assignment. Many people, both within and outside Sudan, have profoundly different perspectives on what happened in Darfur, its causes and its consequences. They also have different views about how the conflict can and must be solved. Our fundamental observation is that the people of Darfur have suffered extreme violence and gross violations of human rights. At the same time, we came to understand that the situation in Darfur cannot be settled outside the framework of the wider challenges facing Sudan as a nation. We also believe that it is Africa's crisis and, as such, Africa has a duty to help the people of Sudan to achieve a lasting solution.

In approaching its task, the Panel was guided by the clear mandate it had been given, namely to examine the three principal pillars of peace, reconciliation and justice in the context of Darfur. In the view of the Panel, the objectives of peace, reconciliation and justice in Darfur are interconnected, mutually dependent and equally desirable. They must be pursued in a manner consistent with the need to achieve democratic and socio-economic transformation in Sudan.

A crucially important component of the Panel's vision is that, ultimately, a settlement in Darfur lies primarily with the Sudanese people themselves, and that it must involve the integration of Darfur into Sudan so as to make it possible for Darfurians to play their rightful role as equal citizens of the nation.

We are aware that a crisis of this complexity and magnitude invokes different types of truths, and that not all truths are welcome to all stakeholders and actors, both within and outside Sudan.

Accordingly, we expect our findings and recommendations to be the subject of debate among those involved in Darfur and Sudan as a whole.

The Panel approached its work in an objective and impartial manner, and conducted its investigations scrupulously, without bias, favour or prejudice. We trust that we have met our responsibilities to the people of Darfur, Sudan and Africa, and that our findings and recommendations provide a solid foundation for working towards peace, reconciliation and justice for all the people of Darfur, and the Sudanese nation as a whole.

We address our Report to you, as Chair of the Commission of the African Union, and request that you forward it to the Peace and Security Council. While the African Union has a central and critical role in implementing our Recommendations, this task also requires commitment from, and action by, various actors and entities, especially the Government of Sudan and other Sudanese stakeholders, the neighbours of Sudan and the rest of the international community, including the United Nations.

Only through the dedication and leadership of all the concerned parties can the world forge the common understanding and consensus required to bring the war, displacement and suffering in Darfur to an end, hopefully on the basis of the Recommendations contained in this Report.

We would like to conclude by thanking you for the honour of calling on us to undertake this important assignment on behalf of our Continent, Africa.

We also wish to express our gratitude to all the institutions and individuals who, over the past six months, assisted our process of consultations and reflection, and to the experts who provided their technical knowledge and judgment.

We also commend the Peace and Security Department of the AU Commission and the AU Liaison Office in Khartoum for providing the required administrative and logistical support and facilitating our work in such a professional manner.

The United Nations-African Union Mission in Darfur (UNAMID) and the Darfur-Darfur Dialogue and Consultation (DDDC) provided invaluable professional, logistical and administrative support, without which our visits and consultations in Sudan would not have been as successful.

We also thank the Governments of Burundi, Nigeria and South Africa for the support they extended to the three former Heads of State who are members of the Panel. This assistance greatly facilitated the work of the Panel.

We hope that the findings and Recommendations of the Panel will make it possible for the African Union to make a decisive contribution to the realisation of a comprehensive and just peace in Darfur, and the achievement of justice, accountability, reconciliation and healing. Translating these Recommendations, once accepted, into reality will be more demanding and onerous than our work thus far, but we are confident that Africa will rise to this challenge.

Please accept, Mr. Chairperson, the assurances of our highest consideration.

Thabo Mvuyelwa Mbeki

Abdulsalami Abubakar

Pierre Buyoya

Ahmed M. El Sayed

Florence N.M. Mumba

Kabir A. Mohamed

Rakiya A. Omaar

PREFACE FROM THE CHAIRPERSON

In 2003 an armed insurrection broke out in Darfur in which insurgents targeted the Sudanese security forces. The Government of Sudan responded with a sustained counter-insurgency offensive to defeat the armed uprising. During this conflict, millions of civilians in Darfur were either displaced internally, or turned into refugees or were killed. From 2004 onwards, the African Union (AU), and the rest of the international community, intervened to end the fighting and to address its causes and consequences.

Despite these efforts, including the adoption of the Darfur Peace Agreement (DPA) and the deployment of forces from the African Union Mission in Sudan (AMIS), and later the United Nations-African Union Mission in Darfur (UNAMID), the conflict in Darfur has not yet been solved. Because it is keenly interested that this outcome should be achieved with minimum delay, the AU decided to constitute the AU High-Level Panel on Darfur (AUPD) to advise on how this objective might be realised alongside achieving reconciliation, accountability and justice.

During its extensive interactions with its Sudanese interlocutors, inside and outside Darfur, the Panel repeatedly heard that the conflict was in reality a manifestation of a broader crisis affecting the whole of Sudan. This larger problem was described as the consequence of the development of a colonial and post-colonial socio-economic system in which a minority of the population, concentrated in and around Khartoum, maintained a stranglehold over political power and economic resources.

As a result, the greater geographic part of Sudan, and the millions of Sudanese who reside in these areas, have been condemned to political disempowerment and domination, economic underdevelopment and marginalisation. This has affected all parts of Sudan – the South and the North, the West and the East.

To contain and manage disaffection and dissatisfaction, the central power inevitably resorted to measures intended to limit the democratic possibilities for the people freely to express themselves and organise to attain what they considered to be their rights.

Sudan is one of the most diverse countries in Africa, in terms of race, colour, culture, language, religion, level of development and many other factors. Its unity, therefore, requires that its development, in all aspects, should be based on the principle and practice of unity in diversity. However, the manner in which it developed during the colonial and post-colonial periods has made this impossible. Thus its diversity has served as a centrifugal rather than a centripetal force.

Other factors have contributed to the tragedy in Darfur, including developments in various countries neighbouring Sudan, and more particularly Darfur. These interventions have had a decisive and negative impact on the situation in Darfur and must therefore be dealt with as part of the resolution of the conflict in Darfur.

Similarly, others within the international community have, over the years, adopted particular positions towards Sudan which have come to serve as a material factor encouraging and/or impeding the resolution of the conflict in Darfur. This issue must also be tackled.

Fundamentally, however, it is the inequality historically embedded in Sudan, and its attendant consequences, that led to the armed uprisings in South Sudan, Darfur, and Eastern Sudan, each targeting the central power which had denied them access to political power and a fair share of the national wealth.

It is true that the central power may have the possibility to defeat and suppress armed insurrections which occur in the periphery. But it is equally obvious that, sooner or later, these insurrections would recur as long as the basic social and economic structure of Sudan remained unchanged.

It, therefore, follows that the establishment of peace in Darfur, in all its elements, including justice and reconciliation, requires, amongst other initiatives:

- bringing the conflict to an end through a negotiated settlement;
- allowing Darfur equitable access to political power and national wealth;
- the democratisation of Sudan;
- accelerating the social and economic development of Darfur;
- promoting reconciliation and building mutual trust;
- making the continued existence of Darfur as part of a united Sudan attractive;
- encouraging all political forces in Sudan to commit themselves to the fundamental reconstruction and development of Sudan; and,
- normalising relations between Sudan and its neighbours and between Sudan and the wider international community.

The extensive Recommendations of the Panel cover all these essential prerequisites in greater detail.

The Panel is encouraged by the fact that its analysis, and the need to confront the political, economic and social consequences of Sudan's profoundly uneven development, have been spelt out and contemplated in a number of Agreements that sought to put an end to previous rebellions in Sudan, notably in the East, South and Darfur itself.

What has been lacking is sufficient manifestation of the political will, and the practical support, fully to translate the insights, the vision and the Agreements into comprehensive and sustained action to improve the lives of all of Sudan's people.

These Agreements include the Machakos Protocol of the Comprehensive Peace Agreement (CPA), the Declaration of Principles regarding the conflict in Eastern Sudan, the Darfur Declaration of Principles (DoP), the Darfur Peace Agreement and the Interim National Constitution (INC) of 2005.

These accords explicitly recognise the fact of historical injustices, inequalities and regional marginalisation in the development of Sudan and affirm that these must be redressed as a central element of the resolution of all violent conflicts in Sudan.

To the extent that the Agreements acknowledge the need to attend to the issues of democratisation, power-sharing and-wealth sharing in order to address the root causes of the conflicts in Sudan, they constitute the basis upon which Sudan can, and should, reconstruct its system of governance. They provide the necessary context within which the specific problems critical to the search for peace and sense of belonging in Darfur must be tackled.

The Agreements advocate the establishment of a federal system of government, which would make it feasible for the regions to exercise effective power at both the regional and federal levels, including the state and local levels.

Thus, they provide a foundation on which to base affirmative action interventions, so that previously weak regions (the periphery) are assisted in an expeditious manner to play an equitable role at all levels and in all spheres of the system of state administration.

Furthermore, the Agreements make it possible to institute programmes to manage the diversity of Sudan in such a way that it reinforces its national cohesion, and serves as a source of strength, harmony and inspiration. They provide the space for a process of regional and national reconciliation which, taken together with the other measures indicated above, should help to reinforce peaceful coexistence and cooperation among Sudan's diverse communities.

Thus there exist Agreements that can facilitate the involvement of the people of Sudan as a whole in determining the future of the country. The implementation of such popular consultative processes would ensure the durability of the Agreements reached, and make a critical contribution to maintaining the national cohesion of Sudan.

Moreover, these Agreements provide the people of Sudan with the political framework within which to act together to appeal to Africa, and the rest of the world, for the resources the country needs for reconstruction, on the basis of the perspectives contained in such documents as the Comprehensive Peace Agreement and the Darfur Peace Agreement, which the international community helped to negotiate.

Whatever might have been its views in the past, the international community has a duty to insist that all Sudanese must implement the provisions contained in such Agreements as the CPA. By the same token, the international community has an obligation to help provide the means to enable the Sudanese to achieve the objectives contained in these Agreements.

Of strategic importance in this regard is the need, for all who are genuinely concerned about a better future for the people of Sudan, to understand and internalise the fact that it is imperative that all Sudanese political and social forces, with no exception, should be mobilised positively to contribute to the historic task of the fundamental renewal of Sudan. These political and social forces should be encouraged to bring their respective constituencies into this endeavour.

Both the Sudanese actors and players in the international community should understand that what Sudan needs is strong and cohesive leadership collectives which enjoy the necessary confidence of the constituencies they lead, to enable them to ensure that these constituencies participate seriously as agents of change in the process of giving birth to a new Sudan.

For their part, the Sudanese actors will have to demonstrate, through their practical actions, that they are indeed such agents of change.

The Republic of Sudan and the Democratic Republic of Congo are the only two countries in Africa that share borders with nine other countries. Apart from sharing borders with each other, and in addition to their own domestic challenges, they are currently located in volatile sub-regions.

Their stability, based on peace, democratic rule, development and good governance, is therefore of critical importance to the future of the region and the continent.

Both countries dispose of very significant human and material resources which have the potential to make a significant contribution to the sustained development of both these countries and Africa at large.

The obverse of this is that if these countries were to disintegrate, or otherwise sink into a deep crisis, they would generate enormous "tsunami" waves which would spell disaster not only for their immediate neighbours, but also for Africa as a continent, as well as pose many threats to the rest of the world.

For their part, the African Union and the countries and peoples of Africa as a whole, have a direct and immediate interest to ensure that the conflict in Darfur is immediately resolved within the context of the perspective discussed above. The African Union has an absolute obligation to organise itself to achieve this objective, including the implementation of those Recommendations of the AU High-Level Panel on Darfur (AUPD) it will accept.

The millions of civilians affected by the conflicts in Darfur, South and East Sudan expect this of the African Union, the premier embodiment of the unity of the peoples of Africa and the custodian of their hopes for a better life characterised by peace, stability, democracy, development and freedom from hunger, poverty, disease, ignorance, hopelessness and fear.

ACRONYMS, ABBREVIATIONS AND GLOSSARY

ACRONYMS/ABBREVIATIONS

AMIS	African Union Mission in Sudan
AU	African Union
AUPD	African Union High-Level Panel on Darfur
CFC	Ceasefire Commission
CPA	Comprehensive Peace Agreement (of January 2005)
CSA	Comprehensive Security Arrangements (Proposed)
DDC	Darfur Consultative Convention (Proposed)
DDDC	Darfur-Darfur Dialogue and Consultation
D-JAM	Darfur Joint Assessment Mission
D-IMC	Darfur Implementation and Monitoring Commission (Proposed)
DoP	Declaration of Principles (of 2005)
DPA	Darfur Peace Agreement
EUFOR	European Union Force (In Chad)
FA	Framework Agreement (Proposed)
GPA	Global Political Agreement (Proposed)
ICC	International Criminal Court
IDPs	Internally Displaced Persons
IGAD	Inter-Governmental Authority on Development
INC	Interim National Constitution
JCM	Joint Chief Mediator
JMAC	Joint Mission Analysis Centre
JRRD	Justice and Reconciliation Response to Darfur (Proposed)
LAS	League of Arab States
MINURCAT	United Nations Mission in Central African Republic and Chad
NCP	National Congress Party
NIF	National Islamic Front
PSC	Peace and Security Council
PCP	Popular Congress Party
SAF	Sudan Armed Forces
SCCED	Special Criminal Court on the Events in Darfur
SH	Suspension of Hostilities
SLM/A	Sudan Liberation Movement/Army
SPI	Sudan People's Initiative
SPLM	Sudan People's Liberation Movement
TJRC	Truth, Justice and Reconciliation Commission (Proposed)
ToR	Terms of Reference
UN	United Nations
UNAMID	United Nations/ African Union Hybrid Operation in Darfur
UNSC	United Nations Security Council
UNMIS	United Nations Mission in Sudan

GLOSSARY OF TERMS

Ajawid	The mediators of a *Judiya*.
Diya	Blood-money, compensation for death or injury.
Hakura (plural: *Hawakeer*)	Traditional land grant, commonly viewed as tribal land ownership.
Judiya (also *Judia*)	Traditional mediation mechanism for inter-tribal conflicts.
Native Administration	Hierarchical system of village sheikhs, and more senior tribal chiefs.
Omda	Administrative chief
Wali	State governor

EXECUTIVE SUMMARY

The AU High-Level Panel on Darfur

1. The AU High-Level Panel on Darfur (AUPD) was constituted by the AU Peace and Security Council to examine the issues of peace, justice, accountability, impunity and reconciliation in Darfur, Sudan. It began its work in March 2009 and completed its assignment in September 2009. This Report is the outcome of four missions to Sudan undertaken by the Panel, amounting to forty days spent in the country, during which time it met with more than 2,700 representative individuals in Darfur and about 400 in Khartoum and visited Juba. The Panel also visited the countries of the region and had discussions with representatives of the international community as a whole.

Sudan's Crisis in Darfur

2. The roots of Darfur's crisis lie in a history of neglect of the Sudanese peripheries, dating from colonial times and continuing during the years of Sudan's independence. The crisis in Darfur is a manifestation of Sudan's inequitable distribution of wealth and power, and the Panel therefore defines it as "Sudan's crisis in Darfur."

3. The crisis in Darfur consists of different levels of conflict, including local disputes over resources and administrative authority, conflict between Darfur and the centre of power in Khartoum, and an internationalised conflict between Sudan and Chad. All of these layers of conflict must be addressed and resolved for peace, security and reconciliation in Darfur to become a reality.

4. The Darfur crisis has political, economic, ecological, security, human rights and humanitarian dimensions. All of these need to be addressed. Millions of Darfurian people live in conditions stripped of human dignity and hope for the future. Despite reduced levels of lethal violence, insecurity nevertheless persists. These unacceptable conditions have persisted for more than six years and must urgently be brought to an end.

5. Sudan faces historic moments in the next two years, including the General Elections of 2010 and the Referendum on self-determination in Southern Sudan in 2011. It is imperative that Sudanese citizens in Darfur are able to participate fully in free and fair general elections. The people of Darfur should also enjoy the possibility to participate in any national dialogue that may be occasioned by the 2011 Referendum, unencumbered by an unresolved crisis in their region. These considerations dictate that the crisis in Darfur is addressed urgently.

6. Africa has responsibilities in Sudan, which the continent has striven to meet. African countries led the way in mediating the war between the North and the South, leading to the Comprehensive Peace Agreement (CPA) and have sought to do the same for Darfur. African peacekeepers serve in Sudan. Sudan's future is critical for Africa. A peaceful, democratic transformation of Sudan would reverberate throughout Africa. On the other hand, should

Sudan fail, the consequences will be felt immediately among Sudan's nine neighbouring countries and far beyond.

The Eruption of a Violent Conflict

7. The unfulfilled aspirations of the Darfurians for a fair share of the country's wealth and equal participation in the national polity made confrontation with the State inevitable. The rebellion which consequently erupted in 2003 was initially organised around the Sudan Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM). The two groups divided largely along ethnic lines, but later fragmented into splinter groups. The outbreak of hostilities led to the launch of a massive counter-insurgency in which, alongside the Sudanese military apparatus, militia groups were mobilised to quell the rebellion.

8. The extreme violence and gross violations of human rights that followed this mobilisation resulted in a massive humanitarian crisis, occasioned by the death of many people, the displacement of over two million within Sudan, and up to 250,000 refugees spilling across the border into Chad. The role of the nomadic groups in forming the militias, and more broadly in the counter-insurgency, has created deep rifts and tensions within Darfurian society that need to be healed.

9. Although the violence associated with the insurgency and counter-insurgency peaked during 2004, non-combatants continued to die and to be displaced after that period, and the legacy of insecurity which predated the insurgency still blights the lives of millions of Darfurians in diverse ways. Because of the breakdown of law and order, characterised by banditry, and fuelled by the free flow of weapons within the community, weak formal policing, and the ineffectiveness of local governance structures, the problems still persist. All of this has made justice and reconciliation a critical component of the quest for peace in Darfur.

Nature and Dimensions of the Conflict

10. Of the range of overlapping conflicts over resources, livelihoods and demands for recognition of ethnic identities that have propelled the conflict in Darfur, land is of particular significance. Competition for land, and access to its resources, has put considerable strain on Darfur's land holding system. Pressures of population growth, shifting patterns of land use, the impact of a changing climate and environmental stress have made land even more prominent and divisive in Darfur. The displacement of a significant proportion of the population, and allegations that the lands vacated by refugees and displaced persons have been occupied by others, have added further complications which must be tackled as a matter of urgency, while a more substantive approach to the land question in Darfur is considered. The issue of land will need to be addressed in a comprehensive manner in due course, beginning at the negotiations for the Global Political Agreement (detailed below), otherwise this matter will continue to foment conflict among Darfurians.

11. At the regional level, the conflict in Darfur has also led to a conflict between the governments of Sudan and of Chad whose relations remain tense. Normalisation of these relations is therefore a necessary condition for stability in Darfur. At the same time, the restoration of security in Darfur is likely to defuse the tensions between the two countries. Internationally, the war in Darfur has attracted humanitarian, political and legal interventions which must be taken into account in responding to the situation in Darfur.

Efforts to Promote Stability and a Settlement

12. Ensuring stability in Darfur requires a political process, in which due attention is paid to the inter-connected pillars of peace, justice and reconciliation, all of which need to be addressed if there is to be lasting peace in Darfur. For their part, Darfurians demand an inclusive and expedited peace process that will provide immediate guarantees of safety wherever they are living today in Darfur. They expect their Government and UNAMID to take the necessary steps to improve their security, while they expect the Armed Movements and the Government to enter a ceasefire arrangement, which will yield lasting security dividends. Following years of displacement, Darfurians seek the right to return to and live in their own homes and communities in safety. To repair the harm they have suffered, they expect the Government to put in place a compensation programme for individual and communal losses, as well as a broader social economic programme for the development and recovery of Darfur. All necessary forms of reparation for those who have suffered harm at the hands of the security forces and allied militia will be essential if the people of Darfur are to rebuild trust in the State.

13. A vision of a renewed and stable Sudan, governed along democratic, devolved and inclusive principles, provides the inspiration as well as the context for the search for solutions regarding Darfur. Settling the conflict in Darfur requires a fundamental transformation within the political configuration of Sudan. This will involve all political forces in Sudan acting in concert, with support from the rest of Africa and the international community, to renew their country. It is a task made particularly urgent by the impending 2010 Elections and the Referendum on Southern Sudan the following year. It is imperative that the people of Darfur are able to participate fully in the elections and any decisions arising from the Southern Sudan Referendum.

14. Africa has been at the forefront of the initiatives to end the Darfur crisis. Since 2004, the African Union's efforts have included the negotiation of a ceasefire, the deployment of a peacekeeping operation, the African Union Mission in Sudan (AMIS), and the mediation of a peace agreement between the belligerents in the Darfur war. Since 2007, the AU has worked with the United Nations in a peacekeeping operation (UNAMID) and in mediation efforts for Darfur through the office of a Joint Mediator. Today, UNAMID fulfils a critical function in stabilising Darfur, providing security for its people, in assisting with humanitarian needs and in encouraging reconciliation within communities.

15. The most significant investment in dialogue was the Abuja peace process which led to the signing of the DPA. The DPA ultimately failed to deliver peace because the key Armed Movements refused to sign the accord. The process was also weakened by the lack of participation by the broader Darfurian constituency in those negotiations. Today, the AU-UN/Qatar-supported Doha peace process represents the focus of efforts to reach a definitive settlement. The work of the Panel should help to strengthen and contribute to the success of that process.

The Search for Justice and Reconciliation

16. Justice and Reconciliation for Darfur cannot be separated. They are inextricably linked and should therefore be approached, conceptually and procedurally, in an integrated manner, in order to contribute to peace and stability in Sudan. Though the events that necessitate justice and reconciliation have arisen with respect to Darfur, they are also of national significance. Therefore, all Sudanese will need to contribute to the debate about the measures that should be adopted with regard to Darfur.

17. The issue of justice for Darfur became acutely polarising after the International Criminal Court issued an arrest warrant for President Omar Al-Bashir in March 2009. The emphasis on the ICC should not distract from the reality that even at full capacity, the ICC can only deal with a handful of individuals, thus leaving the burden of justice to the national system. Today, Sudan, which has not ratified the Rome Statute of the ICC, continues to reject the intervention of the ICC. It cannot, however, ignore its own duty to deal with the crimes that have been committed in Darfur. The Panel considers that the priority must now be to strengthen Sudan's national legal system to deal appropriately with the perpetrators of the violations, and to make reparations to the victims inside Sudan. To date, however, the perpetrators of the serious crimes in Darfur have overwhelmingly remained unpunished and the needs for healing and reconciliation have remained largely unmet. This situation must be rectified urgently, and within the context of achieving a negotiated peace.

18. To achieve this, Sudan can draw upon an established and diverse legal heritage, encompassing common law, customary and Islamic laws. Sudan's constitution, penal laws and system of formal courts provide a sufficient framework for adjudication of crimes within Sudan. The Panel accepts that there are undoubted challenges in investigating and prosecuting mass crimes, particularly while the conflict is on-going. Nevertheless, it believes that a strengthened, politically supported justice system, can rise to the challenge. As a result of the failings of the State in dealing with the grave situation in Darfur, faith in the criminal justice system has been severely eroded. To restore confidence and prevent impunity, a root-and-branch change will be required. In particular, it will be necessary to establish an integrated system of accountability consisting of various measures and institutions working together to deal with the full range of abuses and violations that have been committed during the conflict.

19. Recently, the Government has taken steps to amend its criminal laws to reflect international crimes. This is a welcome first step. There are, however, other impediments to the effective functioning of the criminal justice system. For example, Sudan still retains legislation giving immunity to members of the police and armed forces for crimes committed in the course of their duties. Formal consent from the particular force is usually required before criminal proceedings can be brought against such individuals. These obstacles to justice will need to be removed. In addition, the judiciary of Sudan needs to regain its credibility and esteem in the eyes of the people of Darfur and nationally.

20. Ultimately, the underlying demand for justice comes principally from the victims of the conflict. Their confidence in any national response needs to be rebuilt with credible measures which ensure their meaningful participation in the justice and reconciliation proceedings and processes, thereby satisfying their hunger for justice.

The Need for Reconciliation

21. Justice and reconciliation are mutually reinforcing values and both are needed in Darfur. Reconciliation will take different forms and will help to repair relations between Darfur and the State, and more locally, restore damaged relations among Darfurians. Within Darfur there are established practices and traditions which can be used to promote reconciliation and to settle intra and inter-community disputes. Reparations play a central part of these processes. These mechanisms will need to be complemented by formal justice and reconciliation measures. It is, therefore, especially important that reconciliation should be seen as relevant and compatible with criminal justice processes. Thus, victims of crimes should, as a matter of course, participate in criminal proceedings and, where appropriate, receive reparations through the formal system.

22. At the wider level, the historical marginalisation of Darfur and its people demands remedial political and socio-economic interventions to reverse decades of neglect, and restructure the relationship between Darfur and the centre. A settlement of the Darfur conflict must be underpinned by effective and credible local governance structures within the communities. These have broken down over the years, and need to be carefully rebuilt. Within Darfur, directly arising from the conflict, social relations have been ruptured by the conflict. A process of re-engagement will be required to restore these fractured relationships. Discussions within Darfur on reconciliation must continue to be promoted by the different actors who are engaged in this field. In this regard, UNAMID has a key role to play as has the Darfur-Darfur Dialogue and Consultation.

KEY RECOMMENDATIONS

Seeking Peace

23. The Panel believes that the problem of Darfur requires a political settlement and a process of negotiations that addresses all the issues of peace, justice and reconciliation and is guided by the following general principles:

(a) The conflict in Darfur requires a comprehensive negotiated process in the context of a democratic transformation for the whole of Sudan, which should be built on the values of power sharing, wealth sharing, national reconciliation and pursuit of the objective of national unity in diversity, whether Sudan remains one or two countries after 2011;

(b) Any political process on Darfur should take account of the root causes of the conflict which lie in the marginalisation of Darfur. A settlement should therefore result in the adoption of political, economic and social interventions directed at restoring Darfur's rightful place in Sudan;

(c) The Darfur negotiations should be inclusive. Participants must include armed belligerents, political parties, internally displaced persons, refugees, traditional leaders, native administration, pastoralist groups and civil society;

(d) The search for peace should deal with the external dimensions of the conflict, and normalising relations between Sudan and its neighbours, particularly Chad, as well as the relations between Sudan and the international community as a whole, should be a high priority;

(e) The negotiations to end the conflict should be undertaken expeditiously, given the importance that Darfurians attach to participating in national collective decisions such as the forthcoming elections in 2010, and national discussions arising from the referendum on self-determination in Southern Sudan in 2011.

Approaching the Negotiations

24. The process of dialogue should adopt the following elements:

(a) Formal Agreement between the Government and all armed groups to Suspend Hostilities and thus enter into a binding truce;

(b) The Adoption of a Framework Agreement for the talks, based on the 2005 Darfur Declaration of Principles, with such amendments as may be agreed by the Parties;

(c) Negotiation of a Permanent Ceasefire and Comprehensive Security Arrangements to bring a definitive end to hostilities, leading to the demobilisation, disarmament and reintegration of armed groups;

(d) Negotiation of a Global Political Agreement (GPA) on the basis of the principles and agenda contained in the Framework Agreement.

Promoting Justice and Reconciliation

Adopting a Justice and Reconciliation Response to Darfur

25. Justice and Reconciliation are inextricably linked and should be approached and implemented in an integrated manner. In particular, it is necessary that processes and proceedings for delivering justice and reconciliation are managed in a coordinated manner. The elements of the Response should include:

(a) Measures to expand and strengthen the system of Special Courts to deal with crimes committed in the conflict in Darfur;

(b) The establishment of a Hybrid Court to deal particularly with the most serious crimes, to be constituted by Sudanese and non-Sudanese judges and senior legal support staff, the latter two groups to be nominated by the African Union;

(c) Measures to strengthen all aspects of the criminal justice system, including investigations, prosecutions and adjudication, paying attention to its capacity to handle sexual crimes in an effective manner;

(d) Introduction of legislation to remove all immunities of State actors suspected of committing crimes in Darfur;

(e) Establishment of a Truth, Justice and Reconciliation Commission (TJRC) to promote truth telling and appropriate acts of reconciliation and to grant pardons as considered suitable.

26. In addition to the negotiations of the GPA, a broader debate on justice and reconciliation for Darfur should be undertaken within Sudan, especially as any new justice interventions made with regard to Darfur will have national implications. The African Union should play an appropriate role in encouraging or facilitating this debate.

Social and Economic Justice

27. Measures should be taken to pay compensation and to make restitution and other forms of reparations, for individual and communal losses and harm incurred during the conflict.

28. A comprehensive plan should be adopted for the economic and social recovery of Darfur, to redress historical imbalances and to secure stability in Darfur.

Supporting the Peace Process and Agreements

Assisting and Overseeing the Mediation

29. The AU, the UN and the Principals to the negotiations should support and exercise due oversight over the process of the Mediation to ensure that it is well-planned, well-resourced in all respects, and that the mediation is undertaken within a declared timeframe.

Arrangements for Implementation

30. A Darfur Implementation and Monitoring Commission (D-IMC) should be established with a robust mandate and adequate facilitation to oversee the implementation of the Global Political Agreement.

The African Union

31. The African Union should continue to support the resolution of the conflict and, in particular, the urgent implementation of any aspects of the Panel's Recommendations it adopts. It should accordingly take all necessary steps to strengthen its leadership and facilitating role.

Strengthening UNAMID

32. In order to reinforce the work of UNAMID to meet the needs of the people of Darfur:

(a) Troop contributing countries and other UN Member States should expeditiously provide the balance of forces and assets, including helicopters, required for UNAMID's protection work;
(b) The varied civilian component of UNAMID's role should be further strengthened;
(c) UNAMID should be given the authority to coordinate international humanitarian efforts in Darfur;
(d) UNAMID should play a central part in implementing and monitoring relevant aspects of the GPA.

Mobilising the Region

33. Given the stake Sudan's neighbours have in the Darfur situation, and in the stability of Sudan in general, it is essential for the AU actively to involve Sudan's neighbours in supporting constructively the processes that will be required to reach a negotiated settlement for Darfur and to promote lasting peace in Sudan. In particular, efforts must be made to normalise the relations between Sudan and Chad.

PART I

INTRODUCTION
DARFUR AND THE CHALLENGE TO AFRICA

I. ESTABLISHMENT OF THE AFRICAN UNION HIGH-LEVEL PANEL ON DARFUR

1. The African Union High-Level Panel on Darfur (henceforth the "Panel" or "AUPD") was established by decision PSC/MN/Comm(CXLII), adopted by the Peace and Security Council (PSC) of the African Union (AU) at its 142nd meeting, held at ministerial level, on 21 July 2008. The decision invited the African Union Commission:

> *"To take all necessary steps for the establishment of an independent High-Level Panel made up of distinguished Africans of high integrity to examine the situation in depth and submit recommendations to Council on how best the issues of accountability and combating impunity, on the one hand, and reconciliation and healing, on the other, could be effectively and comprehensively addressed."*

2. Following the adoption of this decision PSC/MN/Comm(CXLII), the Chairperson of the AU Commission appointed the following members to the Panel: Mr. Thabo Mbeki, former President of South Africa (chair); Gen. Abdulsalami Abubakar, former Head of State of Nigeria (member); Mr. Pierre Buyoya, former President of Burundi (member); Mr. Ahmed Maher El Sayed, former Foreign Minister of Egypt (member); Mr. Tieblé Dramé, former Minister in the Government of Mali (member); Justice Florence Ndepele Mwachande Mumba, Judge of the Supreme Court of Zambia (member); Alhaji Kabir A. Mohammed, former State House Counsel, Nigeria (member); and Ms. Rakiya Omaar, Director, African Rights (member). Subsequently, Mr. Dramé was not able to take up his appointment as a member of the Panel.

II. MANDATE OF THE PANEL

3. In line with the decision of the PSC, the Panel was required:

> *"To examine the situation in depth and submit recommendations to Council on how best the issues of accountability and combating impunity, on the one hand, and reconciliation and healing, on the other, could be effectively and comprehensively addressed, including through the establishment of truth and/or*

> *reconciliation Commissions, with the active involvement of the AU and its relevant institutions and, as necessary, the support of the larger international community."*

4. Specifically, the PSC decided that in discharging its mandate and tasks, the Panel should:

> *"Take into account the work done by the AU to contribute to the promotion of healing and reconciliation in Darfur, in the context of paragraph 5 of UN Security Council resolution 1593 (2005), including the recommendations made by the meetings convened by the AU Commission in Addis Ababa on 2 and 3 May and 17 and 18 October 2005, as well as the efforts deployed by the African Commission on Human and Peoples' Rights."*

5. This mandate needs to be read in conjunction with the observations made by the PSC in the same decision in which it:

a) *"Reiterated its unflinching commitment to combating impunity and promoting democracy, the rule of law and good governance, and condemned gross violations of human rights in Darfur;...*

b) *Expressed its strong conviction that the search for justice should be pursued in a way that does not impede or jeopardise efforts aimed at promoting lasting peace;...*

c) *Recalled UNSC Resolution 1593, in which the United Nations Security Council, while referring the situation in Darfur since 1 July 2002 to the International Criminal Court (ICC) Prosecutor, also emphasised the need to promote healing and reconciliation, and encouraged, in that respect, the creation of institutions involving all sectors of Sudanese society, such as truth and/or reconciliation Commissions, with AU and international support as necessary;...[and]*

d) *Further expressed that in order to achieve long-lasting peace and reconciliation in Darfur, it is imperative to uphold the principles of accountability and bring to justice the perpetrators of gross human rights violations in that region."*

6. The Panel's mandate was reaffirmed by decision Assembly/AU/Dec.221 (XII) adopted by the 12th Ordinary Session of the Assembly of the Union held in Addis Ababa from 1 to 4 February 2009. The composition of the Panel, as well as the Team of Experts appointed to assist it, was finalised at the Inaugural Meeting of the Panel, held in Addis Ababa on 18-19 March 2009.

III. VISION OF THE PANEL

7. The Panel derived its vision from its mandate, the Terms of Reference (ToR), the associated PSC's decision and, above all, the substantive engagement which it has had with a wide range of Sudanese people, especially in Darfur, during the six months of its activities.

8. The Panel observed that the people of Darfur have endured extreme violence and serious violations of human rights, and have seen the fabric of their society torn apart by the conflict. More than two million Darfurians live in conditions stripped of dignity, profoundly despairing that the Government of Sudan cares for them as citizens and human beings, fearful for their personal security, reliant on humanitarian assistance for day-to-day survival, and with little hope for the future.

9. The Darfur crisis is also correctly seen as a "Sudanese crisis in Darfur." It results from a legacy of the unequal distribution of power and wealth in Sudan, whereby peripheral regions, including Darfur, have been historically neglected. The war in Darfur cannot be resolved outside the context of a response to the wider challenges facing Sudan as a nation, of democratic transformation, of creating a new and equitable political and developmental dispensation, and of giving the best chance for national unity.

10. The Panel's vision is that there are three principal pillars to the resolution of this crisis, namely peace, reconciliation and justice. The objectives of peace, justice and reconciliation in Darfur are interconnected, mutually interdependent and equally desirable. None of the three goals can, or should, be pursued in isolation or at the expense of the other objectives. However, it is also equally self-evident that the most urgent priority facing the people of Darfur is the achievement of peace, and taking concerted action to deliver justice and reconciliation would itself strengthen progress towards the realisation and consolidation of peace.

11. The three pillars, separately or jointly, are meaningful only within an overall framework of ownership by the people of Sudan, in the context of a system of democratic governance. In that regard, there is a crucially important fourth component to the Panel's vision, which is the integration of Darfur into Sudan in such a way that Darfurians can play their rightful role as citizens of Sudan.

IV. WORKING METHODS

12. During the six months of its existence, the Panel consulted widely with all the relevant stakeholders, including through public hearings and solicitation of written submissions. It encouraged its interlocutors to put forward feasible and practical recommendations which could be implemented. Moreover, the Panel stressed that implementation would be undertaken, first and foremost, by the Sudanese themselves, facilitated by the AU and the rest of the international community. The Panel also decided to undertake further consultations with representatives of these stakeholders in order to discuss its draft Recommendations and thereby assure itself that its Recommendations were indeed realistic, acceptable in principle and could be implemented. A brief account of the Panel's visits to Sudan and consultations with Sudanese and non-Sudanese stakeholders is provided in Annex A.

V. THE SHARED OBLIGATIONS ON AFRICA AND SUDAN TO RESOLVE THE CRISIS

13. On arriving in the Darfur village of Ain Siro, the AU Panel was greeted with these words: "We welcome you to *your* land. It is yours too. We are proud to welcome you to listen to the people of Darfur."

14. Africa took the first initiative to assume responsibility for peace and protection in Darfur, by convening ceasefire talks and peace negotiations, dispatching peacekeepers, and demanding accountability. In so doing, Africa took up a burden of obligation that is yet to be fulfilled. When the attention of the international community turns elsewhere, Africa will still be engaged in Darfur. It cannot be otherwise because Darfur's crisis is also Africa's crisis. Africa, therefore, has a continuous duty to respond to the events that unfold in Darfur. In addition, the conflict has far-reaching repercussions for the African continent, for it profoundly affects the continent's largest country at a critical moment in its national history, as well as its many neighbours and the AU itself.

15. As the continent's premier political organisation, the AU has a profound obligation to facilitate the search for a just solution to the conflict in Darfur. Such a solution must enable the people of Darfur to overcome the bitterness and divisions of the past, live together in peace, and to enjoy their rights as Sudanese citizens and as Africans. Above all, such a solution must be rooted in a consensus that represents a broad political opinion amongst the Sudanese people. Having listened to the voices of thousands of Sudanese citizens, most of them in Darfur, the Panel believes that the solution to Darfur must come from the Sudanese people themselves, and in particular through a process that engages all Darfurian stakeholders in an inclusive process. The Panel's Recommendations do not come from an extraneous body and

nor are they a blueprint determined from outside. These Recommendations are rooted firmly in the views of the people of Darfur and of Sudan themselves.

16. The fundamental obligation to take a lead in restoring peace in Darfur falls on the Government of Sudan. As a sovereign Government, it has responsibilities to its people that are not subject to negotiation. There are many specific actions it can and should take unilaterally to re-establish the confidence of the Darfurian people in their Government. The Sudan Government is also a Government of National Unity arising from the Comprehensive Peace Agreement, committed to a national political transformation. As a consequence, the Government of National Unity has the responsibility to undertake measures that will democratise Sudan, reform governance and accelerate equitable socio-economic development.

17. While a negotiated political agreement is a *sine qua non* for restoring peace, the Sudan Government should not wait for a negotiated agreement before it acts.

18. Peace demands the participation not just of the Sudan Government and the Armed Movements, but all Sudanese stakeholders. The Panel, from its extensive discussions with a wide cross-section of civil society, native administration, internally displaced persons (IDPs), refugees, pastoralists, political parties, and others, came away convinced that all these groups should be actively involved in the search for a solution in Darfur. Such involvement is necessary, both as a matter of principle, but also because all these groups demonstrated that they have a grasp of the substantive issues, and that they have made considerable progress towards a consensus on solutions, in many cases in advance of the belligerents.

VI. ACTIVITIES OF THE PANEL

Cooperation and Consultations with Sudanese and International Stakeholders

19. The Panel conducted its activities from 19 March 2009 until 15 September 2009. Throughout its work, the Panel received the utmost cooperation from all the relevant parties in Sudan, including the Government of Sudan, political parties, rebel movements, civil society organisations, IDPs, native administration leaders, the diplomatic corps in Khartoum, and various other groups and individuals. It also benefited from the cooperation and assistance of UNAMID, the Darfur-Darfur Dialogue and Consultation and international partners. Above all, the Panel enjoyed unlimited support and assistance from the African Union Commission, in particular the officers and staff of the Department of Peace and Security and the AU Liaison Office in Khartoum. The Panel also consulted with, and received submissions from, a wide

range of Governments, international inter-governmental organisations, international non-governmental organisations and various other institutions.

20. To maximise its interactions with the Sudanese people, and to encourage an open dialogue, the Panel organised a series of public hearings in Darfur and in Khartoum to debate the relevant issues. Attendance at these public hearings ranged from a minimum of 100 to several hundred participants, most of whom attended as representatives of various formations and groups. Most hearings had more than 200 participants.

21. For the three hearings held in the Darfur capital cities, the DDDC, with the support of the UNAMID Civil Affairs Division (CAD) and other heads of office, mobilised participants from every relevant locality. The exercise demonstrated the important role that the DDDC, under the AU, is playing as a facilitator of engagement with the Darfurian people, its capacity to promote inclusiveness and dialogue and, through that, its potential contribution to the peace process.

22. For native administration, chiefs from each locality (level of *Omda*) were invited to select representatives who would attend a preparatory meeting the day before the hearing. For the IDPs, representatives from each camp in Darfur participated. Nearly every Darfur IDP camp took part, with the exception of Kalma and Kass IDP camps in South Darfur. However, the AUPD had previously visited Kalma. For civil society, every registered civil society organisation was invited to participate. This involved preparatory visits and meetings across Darfur and the transport of hundreds of representatives to the hearings.

23. Participants conducted preparatory meetings using a questionnaire to elicit their recommendations as how to achieve peace, reconciliation and healing, justice and accountability, and the role of Darfur in Sudan's national political life. The questionnaire proved to be a useful mechanism for structuring discussions.

24. The hearings proved to be an important milestone in terms of widening participation, exploring substantive issues, building confidence, and setting an agenda for steps towards peace, reconciliation, justice and political advancement in Darfur.

25. In Ain Siro, North Darfur, an area controlled by SLM-Abdel Wahid, participants were drawn from all sectors of the community. Many of them had walked long distances on foot to the meeting site. The Ain Siro hearing was the first occasion where the AUPD had spent a full day in discussions on substantive issues with community representatives in a movement–held area. This provided the Panel with a clear picture of the priorities and concerns of the community and its leaders.

26. The Khartoum hearing for Sudanese political parties was a breakthrough in that 14 parties attended, more than had taken part in any other initiative in recent Sudanese history. They included the two parties which had boycotted the 2008 Sudan People's Initiative (SPI), namely the Communist Party and the Popular Congress Party (PCP). The parties engaged

seriously with the four themes of the questionnaire. This was the first all-inclusive public discussion of key issues around Darfur and how they relate to Sudan, including the process of democratisation. In addition to the substantive discussions, the hearing was particularly important because of the inclusiveness of the dialogue. Essential issues such as the relationship between a Darfur peace process and the national elections were discussed, with differences aired and debated. This was the first involvement of the national political parties in a collective discussion with a body liked the Panel on these topics.

27. More than 125 participants attended the Khartoum civil society meeting. They spoke openly and frankly and expressed diverse points of view on controversial issues. The session covered extensive ground, with well-thought out positions on all four issues presented. Sudan lacks a national civil society forum, and this was the first occasion, in some twenty years, in which such a wide range of national civil society organisations had come together to exchange views on any topic.

28. The hearings in Darfur brought together a range of participants. All the issues were on the table and the talks and proposals were substantive. The hearings themselves, simply because they were held, allowed the participants to become part of a process - which was their central demand - and were helpful in consolidating the social and community infrastructure of peace building.

29. The hearing with pastoralists held in El Fasher involved representatives from every North Darfur pastoralist community, the great majority of them Arabs. Overwhelmingly they had not, until then, had the opportunity to interact with the international community in a similarly organised manner.

30. The Nyala hearings involved, in addition, the native administration leaders represented. Over 300 came together from every part of South Darfur, the first time this had happened under international auspices. The conclusions and proposals from the group were comprehensive. Differences as well as consensus emerged, particularly over the issue of elections.

31. The El Geneina (West Darfur) hearings were notable for the breadth of representation, especially that of civil society and IDPs. This was the first occasion such a wide group of individuals from these groups had come together. Some of the key issues which were raised included the role and representation of women, the relative responsibilities of the Government of Sudan and of the Armed Movements for displacement, and the occupation of vacated land by new settlers.

32. The Zalingei (West Darfur) hearings were valuable because of the participation of IDP camp leaders who have generally been militant and unwilling to engage in any peace process. The IDP delegates spoke frankly, advocating their radical positions, including international trusteeship for Darfur, the right of self-determination, and the handing over of the President

to the ICC as a prelude to any political negotiations. The fact that these leaders were ready to meet with the AUPD and share their ideas was itself significant.

33. The Government of Sudan facilitated the process of consultation by its deliberate absence from most of the hearings. The Government honoured a request by the AUPD to stand back and allow the hearings and open discussions to proceed in its absence. Its readiness to facilitate such free discussion under AU auspices was encouraging.

34. In addition to the public hearings, the Panel met with H.E. President Omar al-Bashir and other senior members of the Sudan Government, the AU and the UN, including the Joint Chief Mediator, Mr. Djibril Bassole.

35. The Panel also met with the leaders of a number of neighbouring countries including Brother Leader Muammar Gaddafi, Chair of the African Union; H.E. President Hosni Mubarak of Egypt; H.E. President François Bozize of the Central African Republic; the Prime Minister of Chad, H.E. Youssouf Saleh Abbas; the Prime Minister of Ethiopia, H.E. Meles Zenawi; as well as the Minister of State of Foreign Affairs of Qatar, the Special Envoys to Sudan of the United States, the European Union, China and the United Kingdom; the Prosecutor of the International Criminal Court and the representatives of numerous international NGOs. A significant number of international stakeholders who could not meet with the Panel sent written submissions. A complete list of all the individuals the Panel met with, or received submissions from, is detailed in Annex A.

INTRODUCTORY NOTE BY THE CHAIRPERSON OF THE COMMISSION

I wish to recall that, in line with the decision adopted by the Peace and Security Council (PSC) at its 142nd meeting held on 21 July 2008, calling for the formation of an AU High-Level Panel on Darfur (AUPD), I appointed several eminent African personalities as members of the AUPD. The PSC decision was subsequently endorsed by the 12th Ordinary Session of the Assembly of the Union held from 1 to 3 February 2009.

The AUPD, which is chaired by former President Thabo Mbeki of South Africa, was mandated to examine the situation in Darfur in-depth and submit recommendations on how best to effectively and comprehensively address the issues of accountability and combating impunity, on the one hand, and peace, healing and reconciliation, on the other. In this context, the AUPD convened its inaugural meeting in Addis Ababa on 18 and 19 March 2009. This inaugural meeting was followed by wide consultations with both the Sudanese and international stakeholders.

The Panel completed its work early this month and formally submitted its report to me on 8 October 2009.

The Commission fully associates itself with the recommendations contained in the report and believes that they provide a clear roadmap on how best the interrelated issues of peace, justice, reconciliation and healing could be addressed in Darfur, thereby contributing to the overall objective of promoting sustainable peace and stability in the Sudan. It is my earnest hope that the PSC will seize the opportunity of the consideration of the report to further enhance Africa's leadership in guiding the International community's efforts to help Sudan and the Sudanese people attain peace, security, reconciliation and justice.

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DARFUR

THE QUEST FOR PEACE, JUSTICE AND RECONCILIATION

REPORT OF THE AFRICAN UNION HIGH-LEVEL PANEL ON DARFUR (AUPD)

OCTOBER 2009

CHAPTER 1

SUDAN'S CRISIS IN DARFUR

I. INTRODUCTION

36. The Sudanese nation faces a crisis in Darfur. Rather than characterising this as "the Darfur crisis", which would restrict causes and responses to Darfur itself, the Panel defines it as "Sudan's crisis in Darfur." This points to the fact that important roots of the conflict lie in the historical legacy of Sudan's inequitable governance, and the reality that a solution to the crisis requires decisive contributions by the Sudanese Government of National Unity. Meanwhile, those critics and adversaries of the Sudan Government, who identify Khartoum as the problem, must by the same token recognise that a large part of the solution can only come from Khartoum.

37. This crisis has several dimensions:

a) It is a crisis arising from Darfur's disadvantaged status as a Sudanese periphery, and as such an illustration of the wider national challenges of democratic transformation and equitable development;

b) It is a crisis of physical insecurity, human rights violations, mass displacement and disrupted livelihoods, access to land, a fractured social fabric, and lack of basic governance for those Sudanese citizens who are resident in Darfur;

c) It is an international crisis, insofar as foreign governments and multilateral organisations have stakes in Darfur, international principles are at stake, and any resolution to the crisis requires the normalisation of Sudan's relations with its neighbours and the rest of the international community.

38. The different Sudanese parties to the conflict and stakeholders in Darfur have differing explanations as to how and why the war began. Some prefer to underline the local dimensions, and others the national, while also offering contrasting views on the regional and international roles. Any successful political agreement must deal not only with the root causes of the conflict, but also the concerns and fears of the parties about what they see as the obstacles to achieving peace, reconciliation and justice.

39. Efforts to understand and tackle the Sudanese crisis in Darfur must therefore proceed along all three dimensions simultaneously and in a coordinated fashion.

40. Sudan stands at a crossroads. It may be able to put behind it the conflicts which have marred its modern history and pursue democratic transformation and shared development, or it may be overwhelmed by the many difficulties it faces. Today, it is imperative that the conflict in Darfur is ended in a manner which meets the aspirations of the Darfurian people for sustainable peace, equitable socio-economic development, justice and reconciliation, and full and equal participation in the life of the Sudanese nation.

II. ROOTS OF THE CRISIS IN DARFUR

41. The roots of the Darfur conflict lie at once in its unequal incorporation into Sudan and internally within Darfur itself, its own social, economic and political history, and the particular stresses to which it has been exposed in the last 25 years. The two parallel accounts of the origins of the conflict - national and local - are not alternatives, but in fact are interlocking, complementary narratives.

Darfurian History and Identity - A Synopsis

42. For three centuries from c. 1600 to 1916, Darfur was an independent state. At the zenith of its power in the early 1800s, it was the most powerful state within the borders of present-day Sudan. Darfur has had a remarkably stable continuous identity as a locus for state formation over several centuries, and is a recognisable political unit. From the earliest days it was a Muslim kingdom and to this day, not only are Darfurians all Muslim, but they are well-known for their devotion and piety.

43. Darfur refers, strictly speaking, to the "domain of the Fur." The Fur Sultanate was the last and most powerful in a succession of states centred in the region. During the sultanate, the Keyra clan of the Fur comprised the ruling house. A wider range of Fur clans inhabited the agriculturally rich centre and south-west of the state. In the 18th century, the Zaghawa were closely associated with the state. To the south, east and west were diverse groups, some of which became closely associated with the sultanate, while others retained a strong impulse for political independence, notably the Baggara (cattle herding) Arabs. Arab lineages migrated into Darfur from the 14th century onwards, and intermarried and integrated with the indigenous population.

44. Since the modern nationalist movement began in the 1920s, the Sudanese nation has debated its identity around a north-south axis. The north has been culturally and politically oriented towards Egypt and the Arab world while, especially after independence in 1956, the south has identified with Africa. In Sudanese national debates, "Arab" and "African" have been seen as alternative orientations for national identity.

45. However, no such polarity historically existed in Darfur. All Darfurians are Africans, although some of them claim Arab lineage and others do not. The Fur state was bilingual in Arabic and Fur, using one language in courts and judicial matters and the other for political affairs. In this context, "Arab" and "African" are complementary rather than contrasting labels, referring to overlapping and complementary identities rather than opposing alternatives. Darfurians had no difficulty with multiple identities, and indeed defined their African kingdom as encompassing indigenous Arabs, both Bedouins and the acculturated Arabs who originate in the Nile Valley.

46. During the 19th century, Darfur was increasingly drawn into the violent frontier of the Nile Valley. The expansion of the Turko-Egyptian Empire into southern Sudan led to violent competition with the Darfur sultanate and ultimately, in 1874, to the military defeat of Darfur by the forces of the Egyptian freebooter, Zubeir Rahma. Zubeir was tricked out of his conquest and Darfur was absorbed into Egyptian-ruled Sudan as its westernmost province. During the brief nine-year period of Turko-Egyptian rule, Darfur was one of the "military provinces" of the territory and was never at peace.

47. The 1881 Mahdist uprising that drove the Egyptians and their imperial partners from Sudan and created Sudan's first independent government drew substantial support from Darfur. But Darfur also never knew peace under the Mahdiyya, with revanchist Fur resistance and also counter-Mahdist movements. On the fall of the Mahdist state in 1898, a Fur prince, Ali Dinar, escaped from Omdurman and re-established the Fur state, ruling as a traditional sultan until his defeat by a British expeditionary force in 1916. Darfur was the last independent territory in Africa to be annexed by the British, on 1 January 1917. It experienced just 38 years of imperial rule, during which time it was neglected.

The Sudanese National Crisis

48. The historical roots of the multiple and recurring civil wars which have afflicted Sudan, including Darfur, are a result of the unjust economic and political patterns which underpinned the development and exercise of state power in the country since at least the nineteenth century. Successive governments in the independence era have been unable or unwilling to overcome this legacy and transform Sudan into a nation in which all its citizens equally feel a shared sense of pride and belonging. No solution is possible unless this fundamental task is successfully accomplished.

49. The past casts a long shadow over Sudan. The socio-political structure left behind by the Anglo-Egyptian Condominium is characterised by two kinds of inequality which differentiate both among the regions of Sudan and the social groups within the country. At independence, political influence and economic power rested with those social groups which had benefited from the distribution of resources under the Condominium. While groups from marginalised areas, including especially Darfur, had participated extensively in building the State during Sudan's first independence period (the Mahdiyya of 1885-98), and in the construction of the colonial economic system, these groups and their home regions did not benefit commensurately, if at all, from the wealth, services and governmental systems to which they contributed.

50. Governance during the years of independence has been superimposed on this history, without any progress in creating a new and equitable socio-economic order. A succession of efforts to change Sudan and overcome the legacies of the past, whether nationalist, socialist or Islamist, have so far failed to transform the basic features of inequality. The current Government of National Unity has yet to offer a workable alternative.

51. The Riverine Arab minority that occupied a privileged position during the years of British colonialism took power at independence and, as the new ruling group, used its power to promote its exclusive interests, including its monopoly of political power. Today, Khartoum and its environs are a middle-income enclave surrounded by peripheries that are among the least developed areas in Africa. This striking inequality derives from the way in which the ruling group perpetuated the relationship of a powerful and relatively developed centre, focused on Khartoum, and weak and underdeveloped rural areas. The relative underdevelopment and marginalisation of Darfur is reflective of this broader regional pattern of political and economic subservience to the centre.

52. Ultimately, what the Darfurians have in common with the people of all parts of the country is a desire for a country whose political and economic dispensation is balanced in its distribution of benefits to the citizenry.

53. Successive regional insurrections and uprisings since 1955 have reflected the demands of a wide swathe of Sudanese people for an equitable share of political power and wealth in the multi-ethnic, multi-religious and multi-cultural Sudan. In the case of the southern Sudanese, they have held out the option of secession as a last-resort response in case their demands are not met.

54. The armed rebellion of the Sudan People's Liberation Movement (SPLM), supported principally in southern Sudan, was ultimately settled by the conclusion of the Comprehensive Peace Agreement in 2005. This promised national democratic transformation and the right of the South to self-determination. People in other distant regions of Sudan, many of them already in actual or incipient rebellion, saw this both as an opportunity and a challenge. It was an opportunity, embraced cautiously, to participate in a process of national renewal, while it

was also an indication that the most favourable political settlement to date had been won through armed struggle.

The Sudanese National Crisis as Manifested in Darfur

55. Darfur is an example of this pattern of a weak and divided periphery subordinated to a powerful centre. The incorporation of Darfur into Sudan, both during the colonial period and since independence, led not only to the economic and political marginalisation of Darfurians, but the near-total neglect of their unique history and identity. Darfurians were integrated into Sudan at a disadvantage. Their leaders were not, with few exceptions, recognised on the national stage. The Darfurian people remain integrated into Sudan chiefly as migrant labourers or foot soldiers and junior officers in the armed forces, and they play a secondary role in the cycle of parliamentary rule, military coup, dictatorship, and popular uprising to restore democracy. It was a Darfurian Member of Parliament who proposed the parliamentary act that led to sovereign independence on 1 January 1956, and Darfurian representatives have formed a substantial presence in every national legislature for the subsequent fifty years.

56. Perhaps most importantly, Darfur was appended without consideration to the "northern" or "Arab" part of Sudan, without due acknowledgement of the fact that Darfurian identities were distinct from those of both the riverain north and the south. The potential contribution of Darfur's multiple identities to Sudan's national question remain untapped.

57. During more than half a century of Sudan's existence as an independent nation, Darfur remained neglected and excluded. There were stirrings of Darfurian political consciousness, but they were weak and were quickly absorbed by the national Sudanese political parties. Efforts by Darfurian political leaders to mobilise Darfur-based parties, either clandestine or public, never overcame the constraints of shortage of money, ethnic differences, and the capacity of national parties to co-opt local elites. Millions of Darfurians trekked to central Sudan to work as wage labourers on agricultural schemes, where they have been overlooked both by the political establishment and by Darfur-based political activists.

58. Darfurians were largely bystanders in Sudan's national dramas of recurrent war between north and south, except insofar as many Darfurians were foot soldiers and junior officers in the armed forces. Civilian governments turned to Darfur for its votes but then forgot about its citizens, while military regimes recruited junior officers for the army from the region. The neglect of Darfur culminated in the famine of 1984-85, whose existence was denied at the time by President Jaafar Nimeiri, and the readiness of the successor Government of Sadiq al Mahdi to turn a blind eye to the proxy war between neighbouring countries fought out on Darfurian soil in 1987 and 1988.

59. Many Darfurians joined the Islamist movement in the hope that political Islam would provide them with the emancipation as full citizens that they felt denied by secular political systems. Darfur provided many loyal cadres to the National Islamic Front (NIF), hopeful that their piety, nationalism and numbers would bring them to leadership positions. Many discovered that they were also marginalised within the Islamist movement, and this disaffection gave rise to the Justice and Equality Movement and its critique of the imbalance of power and wealth in Sudan, produced in the 2000 "Black Book."

60. The vision of a "New Sudan" as articulated by the late SPLM Chairman, Dr. John Garang, was highly appealing to many Darfurians, appearing to promise a fairer redistribution of national wealth and power to the regions, and a recognition of the cultural and ethnic diversity of the country. In 2005, the CPA was heralded as Sudan's "second independence" and as an historic opportunity to triumph over the seemingly bitter divisions among Sudanese, offering the country new opportunities to redefine its common identity on the basis of shared values, including unity amid diversity. For Darfurians, the flaw of the CPA was not its vision but its incompleteness: Darfurians were not represented when it was negotiated and did not feel any sense of ownership of the agreement. To the contrary, while many believed in the vision of John Garang, they also saw the CPA as primarily a means whereby the southern Sudanese obtained their rights, but others did not. In addition, the CPA was signed while the Darfur war still raged. One part of the tragedy of Darfur is that, ordinary Darfurians stand more to gain from the CPA's stated primary goal of national unity on the basis of democratic equality, than any other group in north Sudan, and conversely they have more to lose should the CPA fail in this aim and the southerners opt for secession.

61. It is therefore clear that peace in Darfur cannot, in and of itself, bring about lasting stability in the whole of Sudan. Peace in Darfur is a necessary but not sufficient condition for the Sudanese people in their entirety to resume their common project of democratic transformation and building a system of governance that gives the best chance for national unity. Equally, democratisation and development throughout Sudan - the prerequisites for national unity - cannot materialise without a stable peace in Darfur.

62. Thus, the conflict in Darfur cannot be resolved on a permanent basis unless it is part of a comprehensive process radically to transform the historical legacy of unequal development and political participation in Sudan. Any peace settlement which lacks this quality runs the risk of remaining, at best, merely an interim truce between civil wars.

The Darfurian Crisis in Darfur

63. National and local issues have interlocked in generating Darfur's conflict. While some of these elements, such as ecological factors, demand responses that reach far beyond the borders of the region, other causes can be tackled by the Darfurian people themselves, provided they are given the opportunity to do so. Repeatedly in the Panel's consultations,

Darfurians pointed out that the tasks of local reconciliation and finding common solutions to problems internal to Darfur could be achieved by Darfurians using their existing social mechanisms.

64. Among the local roots of the conflict in Darfur are the following four elements: land conflict, environmental decay, the breakdown of law and order, and the spill over of conflict from neighbouring countries and the associated flow of weaponry. These factors are interlinked, each influencing the other.

Land Conflicts

65. In the eighteenth century, the Darfur sultans created a land tenure system known as the *hakura* system. This was a complex arrangement involving feudal land grants to individuals and larger administrative domains, which over time has become identified as a "tribal" system of land ownership. Customarily, the *hakura* system allowed for incomers to acquire usufruct rights to land with few restrictions, and also provided for common access to pastures and recognised and regulated nomadic migration routes. However, it contained within it an explicit hierarchy of local land claims, and, as formalised by the colonial administration, became a rigid framework for regulating land tenure on the basis of tribal affiliation.

66. The *hakura* land system faced increasing strains from the 1970s onwards as drought in northern Darfur, and the expansion of economic opportunities in southern Darfur, contributed to changing patterns of human settlement. In particular, drought-affected peoples from the desert edge moved to settle further south, and farmers expanded their cultivation to encroach on pastures and nomadic routes. Drought-stricken pastoralists who had lost their animals and were compelled to find places to cultivate found themselves with inferior land and insecure tenure rights. Those with herds sought out pastures and water ever further afield, their plight worsened by the decay of Darfur's water infrastructure. Meanwhile, representatives of some communities with weak historic claims on good land began to argue that Sudanese land law did not recognise the *hakura* system and it should therefore be disregarded or overturned. This contributed to fierce internal conflict in the late-1980s, with the Arab and non-Arab parties to the conflict each casting their claims in terms of an "Arab" and "African" territorial belt.

67. This problem was compounded by continuing inflow of migrants and settlers across Darfur's western border, on account of conflict, drought and impoverishment in their places of origin. Pressure on land built up in the 1980s and 1990s, without an agreed mechanism for resolving the resulting disputes.

68. The mass displacement which has resulted from the conflict since 2003 has further compounded the land issue, as some areas of vacated land have been settled and claimed by others. The right of the IDPs and refugees to return home and have their former lands restored

to them has been framed in terms of a restoration of the *hakura* system as a whole. This right was broadly recognised in the 2005 Darfur Declaration of Principles and further refined in the text of the DPA. However, many Darfurians also recognise that if the *hakura* system is restored in a way that creates ethnically-exclusive enclaves, it merely stores up another round of conflict. Hence, any restoration of the *hakura* system will need to be accompanied by an interpretation of the rights and responsibilities contained in the historic system, such that the general right of all Sudanese citizens to the land necessary for them to have a livelihood is recognised.

69. Any sustainable solution demands a comprehensive strategy to deal with the land issue in all its dimensions.

Environmental Factors

70. Drought and environmental change, alongside demographic growth that has increased the number of Darfurians fivefold from 1.3 million in 1956 to over 7 million today, have radically changed the landscape and patterns of human settlement in Darfur. The expansion of cultivation and animal husbandry, without a commensurate increase in developmental infrastructure, technology and access to markets, has created pressure on Darfur's natural resources.

71. Drought and climatic volatility have compelled nomads and their herds to range further afield than ever before. This has led to an increase in disputes between nomads and farmers, many of them turning violent.

72. Darfur's environmental degradation has also been driven by the rapid expansion of its cities, and in the last six years, IDP camps as well. In 2003, at the beginning of the armed conflict, Darfur was 18% urbanised. Today, urban dwellers constitute over 30% of the population and Nyala, with a population of 1.3 million people, is the second largest city in Sudan. An additional 30% of the population lives in IDP camps. The cities are ringed by expanding circles of deforestation, because of the demand for firewood, charcoal and timber for building.

73. Any lasting settlement in Darfur requires a rehabilitation and development plan that includes measures to overcome environmental deterioration. Many past environmental conservation measures have been designed and implemented without consulting the affected people, which has meant that they are not locally owned and hence not sustainable. Involving the Darfurian people in all stages of environmental protection will be essential to the success of any future efforts.

Breakdown of Law and Order

74. Darfur possesses a history of centuries of self-rule, finally terminated when Sultan Ali Dinar was killed and the territory was annexed to Anglo-Egyptian Sudan in 1916. The higher levels of the governance institutions of the Sultanate were dismantled, while the structures of local administration were adapted to the purposes of the colonial government and its method of "indirect" rule through "native administration." Chiefs were paid salaries and were government employees, though subject to rules for appointment, service and dismissal distinct from those prevailing in the secular civil service. The system of administrative tribalism, developed in the 1920s, has remained the foundation of local governance, ever since. Native administration has proved the only viable mechanism for managing inter-communal conflict in Darfur.

75. The native administration system was weakened by successive attempts to abolish it and bring in alternative mechanisms for local government, notably in 1971. However, the formal civil service structures were never adequately staffed or funded and, in many places, the alternative to native administration proved to be no administration. By default, and by the continuing loyalty of local people to village sheikhs, sub district *omdas*, and paramount tribal chiefs who still lived among them, native administration survived, albeit in weakened form.

76. In the last twenty years, the native administration system has been formalised as part of local government. This has come alongside closer governmental control of native administrations. The status of chiefs has been further affected by recurrent territorial reorganisations decreed by government. The role of some native administration chiefs as the responsible authorities for mobilising, and sometimes commanding, paramilitaries of the Popular Defence Forces has also compromised their impartial status in the eyes of many people. Nonetheless, the native administrators have proved more efficient than any other mechanism in managing local conflicts.

77. Violent crime, including livestock theft, hijacking vehicles and armed robbery, became a feature of Darfur in the 1980s. (It was these robbers who were described as the "janjawid.") This arose from a combination of the impoverishment of many young men, the ready availability of weapons, the decline in customary social norms, and the weakness of law enforcement services. The near bankruptcy of local government often meant that underpaid police, with old firearms and little ammunition, moving in dilapidated Land Rovers on the rare occasions on which they could obtain fuel, were trying to pursue bandits armed with new automatic weapons riding in the latest models of Land Cruisers. The weakening and politicisation of the native administration system, alongside the near-collapse of other formal mechanisms for local government and the insufficiency of the police, left large areas of Darfur effectively ungoverned. Against this backdrop, the widespread self-arming of village militia and nomads was inevitable, in turn contributing to the escalation of armed violence and its intractability.

78. A significant part of the Darfurians' persistent demand for security is an expression of their need for competent law enforcement services that can put an end to endemic banditry. The need for capable local government was evident, including both formal and native administration systems. According to many Darfurians who spoke to the Panel, the native administrative system has been politicised and has lost its impartiality and effectiveness. While embracing the principle, Darfurians want a structure that is much more politically neutral and accountable to the people.

Proliferation of Small Arms

79. The final critical factor in the local dynamics was the ready availability of small arms. In the 1980s, there was a Darfurian saying, referring to the Kalashnikov automatic rifle, the AK47: "The Kalash brings cash; without a Kalash you're trash." The rule of the gun began with the use of Darfur as a rear base by Chadian militia fighting against governments in Chad, and the supply of arms to those militia across the Sahara desert, and continued with a thriving illicit market in weapons. Darfur was a victim of its strategic location adjacent to war-stricken Chad.

80. The sheer killing power of modern weaponry, and their availability on the market, contributed to a social change whereby young men were no longer dependant upon their elders for organisation of war, and traditional social mechanisms, such as the payment of *diya* (blood money as compensation) for homicide could no longer keep pace with the number of fatalities. Meanwhile, tribal administration became militarised. One of the principal requirements for an effective chief was his ability to organise and command a local militia.

81. Across Darfur, the Panel met with people who insisted that disarmament and the control of weaponry was an essential component of a peaceful future. Disarmament, they argued, must be comprehensive and equitable, so that only the duly constituted law enforcement authorities and armed forces had the right to carry weapons. This will be a formidable task. In addition, Darfur cannot be disarmed alone. Political settlements and parallel processes of disarmament will also be needed in the neighbouring countries to prevent any illegal flows of small arms back into Darfur.

Tackling Darfur's Internal Conflicts

82. In the consultations and hearings held by the Panel, Darfurians were adamant that their local conflicts could be settled by dialogue and negotiation. The war had harmed them all, and all were exhausted and determined to attain peace as soon as possible, and they were ready to make the necessary compromises for this to be accomplished. What the Darfurians demanded was the opportunity to sit together with external support but no outside interference, to address and end their differences. Traditional mechanisms, such as the *judiya*

mediation and arbitration system, and recent innovations, notably the Darfur-Darfur Dialogue and Consultation, were all seen as indispensable parts of this endeavour.

83. It is also evident that Darfur's internal problems cannot be isolated from the wider national demands, from the conflicts in neighbouring countries, and from issues of environmental management and climate change. All need to be attended to in pursuit of a comprehensive solution.

III. OVERVIEW OF THE CURRENT CONFLICT

84. The first harbinger of future armed conflict in Darfur was an uprising in El Fasher in 1980 to protest against the appointment of a governor for Darfur who was not from the region. This was followed by elections which took on a distinctly ethnic dimension and a regional government that reflected the ethnic loyalties of the winning faction. Tensions in the region were exacerbated by the drought and famine of 1984-85, which led to large-scale migration and the search by desert-edge ethnic groups for greener pastures elsewhere. At that time, the Zaghawa from the far north intensified their settlement of certain areas in eastern and southern Darfur, while hard-hit Arab pastoralist groups which were losing their herds sought farmland in parts of western Darfur.

85. Darfur had always been the locus of armed clashes over herds, migration routes, and disputed farmland. All these conflicts were contained by community leaders, usually by the re-organisation of administrative units. None of them had a wider political, ethnic or ideological character, and the level of firearms technology used was uniformly low. However, in the mid-1980s, automatic weapons became readily available as the conflicts in Chad and southern Sudan spread into Darfur.

86. The immediate cause of the first violent conflict in Darfur was a spill over from Chad. A militia, led and principally composed of Chadian Arabs set up a rear base in Darfur in 1987, and was repeatedly attacked by Chadian government and French military forces. Retreating into central Darfur, this group, the *Conseil Democratique Révolutionnaire* or (CDR), made common cause with Darfurian Arab groups which had been impoverished and left landless following the 1984-85 drought and famine, and ignited the first internal war in Darfur. This was when the term "Janjaweed" first came into more generalised use. It coincided with heightened ethnic and racial awareness, with the infiltration of some Arab supremacist individuals and their agendas, in parallel to a growing identification among Fur and Masalit activists of their "African identity" with the potential to make common cause with the SPLM in southern Sudan. The conflict was ended with the defeat and surrender of the Chadian CDR faction, followed by an inter-tribal peace conference in El Fasher. The drawback of this process was that it treated the

conflict solely as an internal inter-ethnic dispute and ignored its wider political dimensions, and it therefore lacked a capable mechanism for enforcement and follow up.

87. Another round of the Chadian civil war was fought out in Darfur following the March 1989 attempted coup against Hissène Habré. Following the failure of the coup attempt, some of the forces involved took refuge in Darfur. At the end of 1990, these forces, backed by the Sudan Government, used Darfur as the launch-pad and successfully took power in N'djamena. The subsequent security pact between Khartoum and N'djamena was that each would deny its territory as a rear base to attack the other. During the decade in which this deal held, conflicts in both Darfur and Chad occurred, but were contained and did not spiral out of control.

88. In December 1991, an SPLA unit headed by an ethnic Fur and former Muslim Brother, Daud Bolad, penetrated Darfur with the intent of initiating an insurrection. The unit was intercepted and defeated by a combination of army units and militia. A brief period of repression followed, which included the rounding up of Bolad's secret cells.

89. After an administrative reorganisation in Western Darfur in 1995, which threatened to reduce the authority of the Masalit Sultan and potentially make the Masalit junior partners in an administration dominated by Arabs, there was an intense localised conflict in that area. The Arabs accused the Masalit of intending to exclude them entirely from local administration, access to land and services. The Masalit accused the Arabs of working with the Government to take over their land. The conflict, which raged in several rounds of fighting from 1995 to 1999, ended decisively with the Sudan Government clampdown and show of force, followed by an inter-tribal reconciliation. During this period, the Sudan Federal Democratic Alliance, a Darfurian-based opposition group aligned with the National Democratic Alliance based in Asmara, tried to instigate a wider rebellion, but due to the refusal of the Chadian Government to support it, it failed to obtain a foothold.

90. Following the internal power struggle and split within the Islamist movement in 1999-2000, some Darfurian Islamists left the Government and began mobilising in opposition. Among them were significant numbers of ethnic Zaghawa. For the first time, the possibility emerged of an alliance between Fur, Masalit and Zaghawa - a prospect which was extremely alarming to the Sudan Government and to the Darfurian Arabs. The beginning of the Sudan Liberation Movement (SLM), at that time known clandestinely as the Darfur Liberation Front, can be traced to meetings between Zaghawa and Fur leaders in 2001. Deeply concerned by this, the Government began counter measures which included distributing arms to Arab groups. By 2002, there was fierce fighting in several parts of central and northern Darfur and already tens of thousands of people were displaced.

91. The clandestine Darfur resistance secured a major breakthrough when they won military support and a tacit political alliance with the SPLM in southern Sudan in late 2002. Although the SPLM was deeply involved in peace negotiations with the Sudan Government at the time, it was simultaneously pursuing a strategy of intensifying the political and military pressure on Khartoum, and saw a chance of supporting a new front in Darfur. Combined with

financial resources from dissident Islamists and access to weapons supplies illicitly in Chad, this provided the Darfur resistance with the means to expand its military operations and, for the first time, pose a significant threat to the Sudan Government.

The Intense Conflict of 2003-05

92. The SLM, and its armed wing, the Sudan Liberation Army (SLA), declared itself in February 2003 with an assault on a police post at Golo followed by a public announcement. It published a manifesto that its cadres had drawn up with the assistance of the SPLM. JEM declared itself the following month. At that time, the governor of North Darfur, Ibrahim Suleiman, was engaged in peace talks and saw the likely solution to the conflict in the form of settling local disputes, controlling renegade militias, and providing stepped-up development assistance and services.

93. However, a rebel attack on the Government air base at El Fasher in April 2003 proved a humiliating reverse for the armed forces and sparked intense recruitment by the army. Unable or unwilling to count upon the loyalty of many army and paramilitary units in Darfur, the Government relied heavily on mobilising militia, especially Arab groups that were fearful of what they saw as an aggressive and exclusivist political agenda of the Fur-Zaghawa alliance.

94. Between June 2003 and March 2004, a series of three huge combined offensives were launched in northern and western Darfur, including regular army units, the air force, and militia. Hundreds of villages were burned and more than a million people driven from their homes. The SLA and JEM forces were severely defeated.

95. No definitive figures for the numbers of people who died in the war are available. Senior UN officials have given overall estimates of the death toll, the greater proportion attributable to hunger and disease that range as high as 300,000. Diverse sources, including surveys of mortality and compilation of incidents, suggest that a minimum of 35,000 non-combatants were killed in violent attacks during the period of intense hostilities in 2003-04. Most of these were killed by forces loyal to the Sudan Government, though there were also serious abuses committed by rebel forces.

96. The ceasefire of April 2004, which coincided with the completion by Sudan Government forces of their largest military operations to date, marked the end of the most severe period of violence and destruction. Dispersed into the desert and mountains, the SLA and JEM contemplated their options and decided to go on the offensive in eastern and southern Darfur, in areas which had been relatively unaffected. A further period of violence followed between June 2004 and January 2005, in which hundreds of thousands more were displaced and several thousand were killed.

97. The violence and forced displacement unleashed a humanitarian disaster. Surveys estimate that approximately 140,000 people died on account of hunger and disease, possibly more. Before April 2004, humanitarian operations were minimal, largely because of prohibitions on access by the Sudan Government. After this date, humanitarian operations were stepped up and slowly the majority of hungry and displaced people received some relief assistance. Although the levels of violence began to drop, hundreds of thousands more were driven from their homes as the conflict spread into eastern and southern Darfur. Only by the end of 2004 did the mortality rates from hunger and disease begin to drop.

Patterns of Continuing Conflict After 2005

98. Since January 2005, the conflict in Darfur has taken on a different pattern. This is characterised by the breakdown of the major alignments that existed during 2003-04. The armed movements have progressively split into numerous factions and the Arab militia and Sudan Government paramilitary groups have similarly fragmented. While during 2003-04, it was possible to identify the Arab militia as overwhelmingly aligned with the Sudan Government and the non-Arab groups as overwhelmingly aligned with the rebels, this has gradually broken down.

99. During 2006-07, major factions of the rebel groups, and also some non-Arab militia, aligned themselves with the Sudan Government. The largest of these is the SLA-Minawi, after Minni Minawi signed the Darfur Peace Agreement in Abuja in May 2006. In June 2006, the SLA-Free Will and two other groups signed a "Declaration of Commitment" to the DPA and joined the Sudan Government as junior partners. Subsequently, there was a trickle of other armed groups making deals with the Government. Signing these agreements has not stopped these groups from fighting one another and against Sudan Government paramilitaries and Arab militia. Some have turned to banditry, including making opportunistic alliances with whatever groups are ready to collaborate in large-scale raids.

100. During 2007-08 there was a major mutiny by Arab militia, and fighting between the Arab militia and Sudan Government was a principal source of violence. The main mutinous groups settled with the Sudan Government in 2008, but did not resume their prior pattern of attacking non-Arab communities. A number of Arab groups remain independent and discontented. They are generically known as *jundi al mazloum*, "the unjustly neglected soldiers." Others have turned to banditry.

101. Arab groups have also turned on one another. About one third of the fatalities in 2008-09 were caused by Arab tribes fighting each other. These conflicts were primarily over land, water, cattle, and control of local administrative authority. It was only in early 2009 that the Government proved effective in mediating and settling many of these disputes, often by dint of arresting community leaders and threatening armed reprisals.

102. The Sudan Government has created a plethora of paramilitary groups under parallel commands, including the Border Intelligence Brigade, the Central Reserve Police, National Security units, and others. These groups frequently act on their own account and on occasions fight against one another or against other groups aligned with the Sudan Government.

103. Among the rebels that remain opposed to the Sudan Government, there has also been some infighting, though on a much smaller scale. For example the split in the SLA-Abdel Wahid created by the attempted coup of Ahmed Abdel Shafi led to violent conflict between the two. JEM itself splintered and there were skirmishes with breakaway groups and violent suppression of internal dissent. For some military operations, however, units from diverse factions combined to launch joint attacks, dispersing in their separate directions on completion of the operation. Within the IDP camps, different factions have fought violently.

104. During 2007-08, JEM emerged as the principal military force in opposition to the Sudan Government in Darfur. It mounted a series of offensives, culminating in a bold attack on the national capital in May 2008. Fierce fighting in Omdurman left more than 300 civilians and combatants dead. It was a striking if brief escalation of the war. Subsequently, JEM was unable to retain a territorial base within Sudan.

105. In short, Darfur has become a conflict in which all groups fight all other groups. Resolution of the crisis, however, requires correctly identifying the nature of the underlying conflict. A political agreement between the Sudan Government and the Armed Movements is the *sine qua non* for addressing the other elements of armed violence in Darfur.

IV. THE HUMAN CONSEQUENCES

106. As the violent conflict unfolded from 2002 onwards, it generated immense human suffering, which is not only an issue of urgent importance in and of itself, but has also given rise to new political claims and dynamics.

Fatalities

107. The war of 2003-04 was fought with extreme violence, both among combatants and against the civilian population. There are no reliable figures for the numbers of people killed, but international human rights investigators estimate that approximately 35,000 people, mostly civilians, died a violent death, between April 2003 and January 2005. About 90% of those fatalities are estimated to have occurred between June 2003 and March 2004. As noted

earlier, even greater numbers of people died from the indirect effects of violence, through starvation, disease and exposure.

108. Since 2005, the numbers of people killed have been considerably lower, and also much better documented by AMIS and UNAMID. The UNAMID incident record from January 2008 to July 2009 indicates approximately 120 violent deaths per month. This breaks down into approximately one third civilians, one third combatants and one third killed in inter-tribal fighting, mainly among Arab groups in South Darfur. Details of this analysis are spelled out in Appendix B.

109. During the period January 2008-July 2009, according to the UNAMID dataset, 585 civilians were killed, including 90 IDPs. The reports indicate 675 combatants killed, consisting of 333 members of the regular forces, 153 irregulars, 98 members of the Armed Movements that had joined the Government, and 91 members of Armed Movements fighting against the Government. A total of 585 civilians and combatants were killed in inter-tribal fighting. As well as fighting between pro-Government and anti-Government forces, there were also clashes among groups aligned with the Government, which caused significant numbers of fatalities.

110. The Panel's review identified some incidents, especially in the early part of 2008, in which UNAMID reports were incomplete. The review estimated that the UNAMID dataset underestimates total violent fatalities by 10-15%, that its reliability and accuracy has increased and that its depiction of the overall patterns and trends in violence is accurate.

111. The Panel agrees with the views of the former Joint Special Representative and head of UNAMID, Rodolphe Adada, expressed in his report to the UN Security Council on 27 April 2009, that Darfur has become a "low intensity conflict" in terms of direct military confrontations. The Panel also underlines his interpretation of this finding, which is that a low intensity conflict remains a conflict, that there is an ever-present risk of escalation into a high-intensity conflict, that the terrible human, social and political legacy of the intense hostilities of 2003-04 remains without remedy, that severe hardship and suffering remain, and that a political resolution of the conflict is imperative.

112. The Panel notes that rigorous collection and analysis of the data is a powerful tool for understanding the nature of the ongoing conflict, including planning for UNAMID deployment and engaging in violence reduction, cessation of hostilities and local peacemaking activities. It encourages UNAMID to collect, analyse and publish this information on a regular basis. While it is not possible definitely to attribute the cause for the reduction in violence in Darfur only to the UNAMID deployment, the Panel is confident that UNAMID has contributed to this positive development, and that its success should be acknowledged accordingly.

113. Crimes of sexual violence, including rape, are under-reported and there is insufficient data to undertake rigorous analysis. The Panel suggests that providing protection to women and girls, discreet and confidential services to survivors of sexual violence, and legal action against perpetrators should be a priority, more than obtaining comprehensive data.

114. The Panel notes that the extent of lethal violence is not the sum of the harm inflicted upon the people of Darfur, either currently or during the course of the conflict. The ending of large-scale war does not mean that Darfur is at peace; nor does it detract from the urgency of finding a political settlement. Nonetheless, lethal violence is a central element to the crisis in Darfur, and protecting civilians from the risk of death is a major undertaking and is integral to the mandate of UNAMID. The evidence suggests that the situation is not getting worse but is gradually improving. As stressed above, among other factors, credit for this must be given to UNAMID.

War Crimes and Other International Crimes

115. Since the escalation of conflict in 2002 and the outbreak of major hostilities in 2003, horrendous atrocities have been committed in Darfur, including killing, torture, rape and forced displacement. The extent of these violations shocked Darfurians, other Sudanese, and in due course the rest of the world.

116. African organisations were quick to call attention to the human rights abuses and to demand an end to them. In March 2004, in its role as co-mediator, the AU learned of the gravity of the violations and called upon the parties to halt them, reminding the Sudan Government of its responsibilities to its citizens. The African Union raised the issue of human rights in Darfur at its July 2004 Assembly and convened a special session of the African Commission on Human and People's Rights in October 2004. The PSC consistently stressed the need to respect human rights and end violence against civilians, calling on all concerned, in particular the Sudanese Government, to take the steps required to this end.

117. During its visits to Darfur, the Panel was repeatedly and emphatically reminded of the appalling extent and nature of human rights violations in Darfur. Panel members heard accounts from witnesses and victims. While most of the cases of extreme violence dated from the period 2003-04, people from all walks of life recounted incidents of ongoing violence. Many of these related to conditions in and around IDP camps, but villagers, pastoralists, refugees and urban dwellers are all suffering from everyday threats of violence.

118. The Panel heard passionate, principled and repeated demands for justice and an end to impunity, as detailed in Chapter 3.

Humanitarian Crisis

119. The intense hostilities of 2003-04 created a humanitarian disaster which cost the lives of scores of thousands of Darfurians. During the intense phase of the conflict, there were episodes in which civilians were exposed to conditions which caused rapid starvation, while

any access to humanitarian aid was blocked. This was followed by a period in which a humanitarian operation was organised on a large scale, focusing on the makeshift camps where displaced victims of the war had congregated. In due course, this effort brought to an end the acute phase of the humanitarian problems, but not before an estimated 140,000 people or more had lost their lives to a combination of hunger, disease and exposure. More than two million people were forcibly displaced by the conflict in this period.

120. Mass displacement and impoverishment has continued to be a fact of life for millions of Darfurians. The number of people residing in the IDP camps has remained stubbornly high, and although basic humanitarian conditions in the camps have been short of emergency levels for several years, people live with little dignity, with pervasive insecurity, away from their home villages. In the rural areas too, farmers and herders alike are impoverished and deprived of basic services, and vulnerable to further deprivation in the case of drought, violence or other adversities.

121. Humanitarian needs in the areas of Darfur controlled by the Armed Movements have been particularly neglected. Several hundred thousand people are estimated to live in areas which have been beyond Government control since 2003-04. Although a semblance of normality has returned to many of these areas, with communities resuming subsistence livelihoods, reopening markets and establishing schools, major humanitarian and service delivery needs remain, unmet by Government and largely forgotten by international agencies. Among the urgent needs are funding for schools, medical assistance, water supplies, veterinary services, food relief, and seeds and tools.

122. Humanitarian organisations have been in the forefront of international efforts to respond to the needs of the IDPs and refugees, from the provision of food, water, health services to educational facilities. Working in a difficult physical and political environment, they have provided a lifeline for thousands of Darfurians.

Collapse of the Social Fabric

123. Among the gravest losses has been the destruction of Darfur as a multi-ethnic community with vibrant traditions of good neighbourliness and mutual respect. Most communities were multi-ethnic, but the polarisation, mistrust and tribal introversion associated with the war have damaged the social fabric.

124. Local institutions and customary mechanisms have been hugely damaged. Tribal structures have been militarised and politicised and traditional mechanisms for delivering justice and resolving disputes have been undermined. Across Darfur, the Panel met with people who insisted that they would rebuild the social fabric of Darfur, given the opportunity to do so on their own terms. The Panel observed the efforts of the DDDC to assist community leaders in this necessary process.

125. One of the disturbing outcomes of the war, and the international humanitarian and advocacy response, has been the stigmatisation of the Darfur Arabs. The term "Janjaweed" has often been applied indiscriminately to imply that all of Darfur's Arabs are associated with the militia. In addition, the characterisation of the conflict as a confrontation between "Arabs" and "Africans" reinforces the misleading and dangerous argument that the Arabs are foreigners in Darfur and cannot, therefore, be part of the solution. On the contrary, Darfur's Arabs are an intrinsic and indigenous part of the social fabric and must be fully part of any solution.

126. The war has witnessed the collapse of livelihoods. In many areas, farming has been abandoned. Pastoralism has suffered because of the collapse of markets and the closing of nomadic routes. The mass displacement has fuelled urbanisation and it is probable that many of those currently in IDP camps, or displaced in the towns, will end up as long-term urban residents, reliant on new forms of livelihood. A war economy has grown, so that there are people with vested interests in continued lawlessness. The task of reconstruction will be more than rebuilding infrastructure, providing employment and replacing assets - it will require a strategic plan for the rehabilitation of the social economy of Darfur.

127. The conflict has also brought about a lack of confidence in the State. Many Darfurians who spoke to the Panel held the Government directly responsible for their suffering, while others accused the Government of abandoning them to conditions of insecurity and misery. The primary responsibility for the rehabilitation of Darfur falls upon the Government of National Unity of Sudan, and the Panel found that high on its list of priorities should be measures to restore confidence in the State.

CHAPTER 2

THE SEARCH FOR PEACE IN DARFUR

I. INTRODUCTION

128. In listening to the views of Darfurians and other Sudanese, the Panel was struck, above all else, by the deep yearning for peace. No one consulted by the Panel in Darfur supported the continuation of the war for a single additional day.

129. In discussing how peace might be restored, the people of Darfur, and other Sudanese, shared a common vision of an inclusive peace process which involves all sectors of society and tackles all the dimensions of the conflict. Furthermore, Darfurians are already taking practical steps to make peace at a local level. The Panel encourages the belligerent parties in Darfur, including both the Sudan Government and the Armed Movements, to heed the views of the people of Darfur.

130. As detailed in the preceding chapter, Darfur is the epicentre of overlapping circles of conflict, from clashes between local communities, to a war between the Government and allied militias against Armed Movements. In addition, tensions continue between the Governments of Sudan and Chad, which accuse each other of supporting armed groups hostile to the other country, and, finally, the conflict also has wider international dimensions.

131. The Panel noted that Darfur is currently experiencing a political and military stalemate. Neither side has been able to defeat the other. The Panel heard the appeal of the ordinary people of Darfur for immediate steps to improve security.

132. The Panel reviewed prior and ongoing efforts to bring about peace in Darfur, noting that none of these initiatives had so far proved fruitful. The Panel recognises the enormous difficulties which successive mediators have faced, but nonetheless concluded that increased efforts towards an inclusive and expedited peace process were both critical and urgent.

II. VIEWS OF THE PARTIES AND STAKEHOLDERS

133. The Panel believes that the solution to the Darfur conflict, and the formulation of any strategy for securing lasting peace in Darfur, must be based on the views of the people of Sudan themselves, including the Government and political parties, and in particular the views of the people of Darfur encompassing the Armed Movements, IDPs and refugees, traditional leaders, native administration, civil society organisations and nomads.

134. In its consultations and hearings, the Panel therefore invited all stakeholders to respond to this simple but fundamental question: what should be done to achieve peace in Darfur?

135. The responses to this question were framed with reference to a definition of the causes of the war. In this respect, the Sudan Government focused on the responsibilities of the insurgents, the conflict with Chad, local tribal and resource issues, and the failure to date to establish normal political and diplomatic relations with key members of the international community. Members of the Armed Movements blamed the Government and the inequitable relationships between the centre and Darfur. The people of Darfur - including civil society, native administration, IDPs and pastoralists - included all of the above.

136. The following key points arose from the consultations and hearings in both Darfur and Khartoum:

(i) A strong desire for security in Darfur. People put responsibility for security primarily on the Government of Sudan and sought reassurances that the recent improvements would lead to progress in the long-term. In particular they called for:

(a) Closer collaboration between the Government and UNAMID;

(b) Disarmament of all militia forces, starting with those aligned with the Government. They acknowledge that disarmament cannot be selective, forcible or implemented in haste, but added that new security arrangements must be put in place in a realistic manner to increase protection;

(c) Greater security in and around IDP camps, as well as the importance of providing security for IDPs who choose to return home;

(d) An immediate ceasefire between the Sudan Government and the Armed Movements.

(ii) With remarkable unanimity, the people of Darfur, as well as political parties and civil society in Khartoum, demanded an inclusive, comprehensive and expedited peace process.

They pointed to certain lessons from the past and made suggestions as to how to move forward, including the following points:

(a) The DPA failed because of its non-inclusive nature. Because they were not consulted, the people of Darfur did not feel a sense of ownership of the DPA. People did not, however, repudiate the substance of the DPA in its entirety. They indicated that they were looking to an inclusive process that builds on the achievements which have already been made;

(b) The 2005 Darfur Declaration of Principles continues to command widespread consensus;

(c) The Armed Movements must come together, at a minimum to present a unified negotiating position in future peace talks.

(iii) Across the board and irrespective of political affiliation, there was solidarity and sympathy for the plight of the IDPs and refugees. The Panel was told repeatedly that the legitimate core demands of the IDPs must be accepted, and should not be acted upon only after the negotiations, because the Government has a responsibility to take unilateral steps to ensure the following:

(a) Work with UNAMID to improve security in the camps;

(b) Facilitate the right of IDPs and refugees to return to their land, to which the Sudan Government has agreed in principle. To make it possible for the IDPs and refugees to return home in a secure and orderly manner, there must be investigations into allegations of land occupation, assistance with voluntary return and UNAMID patrols and community police services in the areas of return. The IDPs themselves must be involved in the implementation of all these measures;

(c) Humanitarian needs should not be disrupted and the current mechanisms for the delivery of humanitarian assistance must be reinforced. A roadmap for a recovery programme and development assistance must be drawn up which, the Panel noted, requires the revival of the Darfur Joint Assessment Mission (D-JAM). Many IDPs are likely to remain in the camps and towns, and an urban development programme should be designed with their needs in mind and implemented;

(d) The Government should make an unequivocal commitment to the principle of compensation, both individual and collective, thereby giving IDPs and refugees the confidence to look positively to the future.

(iv) Representatives of the nomadic population pointed out that their needs for health, education and basic services on an equitable basis with the rest of the population, should not be overlooked. For peace to endure in Darfur, they argued that pastoralism must become a sustainable livelihood. The majority of people interviewed by the Panel agreed that pastoralists must be involved in the peace process so that they too feel a full sense of ownership over what is agreed.

(v) The inhabitants of areas under rebel control want life in their localities to be normalised as rapidly as possible. They told the Panel that health, education, veterinary services, water supply rehabilitation and agricultural development can be extended without risk to many places which are now sufficiently tranquil. The provision of such services by the Sudan Government, with the help of UNAMID, in a manner compatible with the requirements of the local people, would constitute an important confidence-building measure.

(vi) Land was a major concern in all of the responses concerning peace. As the previous chapter shows, land was one of the root causes of the war in Darfur, and it remains a key issue in future negotiations. Among other questions, the settlement of people affected by desertification, the rights of recent immigrants from Chad, and the status and regulation of nomadic migration routes, need to be considered.

(vii) The Panel was struck by the strength of opinion among Darfurians that they are both able and willing to work for peace and reconciliation at the local level, and to reinvigorate traditional mechanisms for conflict resolution, provided they are given sufficient security and reliable assurances of non-interference from outsiders.

(viii) The Panel also found very substantial convergence among stakeholders on some of the central political issues that have divided the parties in the past. In particular:

(a) The Panel encountered broad support for the establishment of a single Darfur region. There were, however, diverse views as to whether the establishment of a region should be declared immediately or should be subject to negotiation or referendum. Whatever form future discussions take, disagreements about the existence of a single region should not be the occasion for another conflict;

(b) Equitable representation of Darfurians in power structures in Khartoum was another demand expressed by all. They argued in favour of representation based on population size, affirmative action and a vice presidency reserved for Darfur;

(c) With regard to elections, there were divergent views as to whether a free and fair election would be possible under current circumstances. Some argued that the Census was unfair and that the preconditions for exercising civil rights did not exist. IDPs were worried that should they be registered to vote in the camps, they would lose their right of return. People living in areas controlled by the Armed Movements pointed out that they had not been included in the Census. On the other hand, some argued that the Census showed that Darfur had a large population and therefore it should not forego the chance to exercise its electoral power. Overall, people reflected anxiety about the elections. The Panel is of the view that for an election to take place, the current peace process must be accelerated to ensure the existence of a political environment and conditions that would make the election both feasible and credible to all stakeholders;

(d) Citing the lack of development as a root cause of the war, the people of Darfur expressed a strong demand for social and economic development as an investment in future peace.

III. THE AUPD'S APPROACH TO PEACE IN DARFUR: FUNDAMENTAL PRINCIPLES

137. Drawing upon the views expressed by the people of Darfur and the stakeholders consulted in Khartoum, the AUPD believes that a solution to the Darfur conflict can only come through a revised political agreement (a Global Political Agreement – GPA), and that a renewed approach to peace in Darfur should conform to the following three fundamental principles:

a) *First, peace must be inclusive:* It must involve all the stakeholders in Darfur;

b) *Second, peace must fully address the multiple dimensions and layers of the conflict*: It must include the establishment of peace at a local level in all the affected areas and communities;

c) *Third, peace must be sensitive to the broader national context*: It must take account of the wider national challenges facing Sudan, including the need for democratic transformation and South Sudan's exercise in self-determination.

Inclusivity

138. The popular demand for an inclusive peace process was borne out of the experience of the Abuja talks, and recognition that the failure to consult adequately with Darfurian stakeholders led to serious misunderstandings about the content and purpose of the peace proposals, and lack of ownership of the process and outcome by the Darfurian people. The Panel's public consultations showed the eagerness and determination of the people of Darfur to be an integral part of the peace process. They also underlined the extent to which they understand the issues and have in fact forged consensus on many areas.

139. The views and experiences conveyed to the Panel in the public hearings were a convincing demonstration that the people of Darfur can contribute to any peace process and should not be sidelined. The Panel is not persuaded by arguments that broadening

participation will complicate and slow down negotiations and open the door to spoilers. On the contrary, the Panel found, both in Darfur and elsewhere in Sudan, agreement across sharp political divides on some of the most contentious questions. As a consequence, it believes that wider involvement of stakeholders will prove a stabilising factor, especially in terms of anchoring the Armed Movements in a common position on the issues for negotiation.

140. The engagement of civil non-belligerents provides an opportunity to confront the consequences of the fragmentation of the Armed Movements. Should the wider stakeholders adopt a consensus position consistent with the central tenets of the Movements' political claims, it will be difficult for the Movements not to coalesce around such a position.

141. In arguing for the principle of inclusivity, the Panel draws a distinction between political matters, including democratisation, governance, wealth sharing, land, the return of IDPs and refugees, reconstruction, reconciliation and local security, whose resolution requires the full participation of all stakeholders, and military/security concerns which should be confined to the belligerents.

142. Since the overwhelming majority of the population of Darfur will not take a direct part in the discussions over peace, a mechanism must be found that will make it possible for them to be kept informed of the content and progress of the talks, and which enables them to make their inputs. The Panel proposes the creation of a Darfur Consultative Convention (DCC) as a channel for keeping the people of Darfur informed and the negotiators aware of how their discussions and decisions are received among Darfurians.

143. One of the functions of broader participation is that civil society and other key stakeholders should feel co-ownership of the peace process and internalise the issues and solutions, so they can in turn popularise the Global Political Agreement and give it life on the ground. This will necessitate a continual engagement between the negotiating forum and the grassroots. The proposed DCC can provide the means for this engagement, feedback and sense of ownership.

Addressing All Dimensions and Levels of the Conflict

144. The Darfur peace process will necessarily encompass efforts by different actors directed at different issues simultaneously. Firstly, while the high-level peace initiatives are continuing, it is essential to strengthen local efforts at peace-making which have emerged at the grassroots. The Government of Sudan, the Armed Movements, UNAMID and DDDC all have responsibilities for nurturing these initiatives and ensuring that the negotiating forum is kept fully informed about progress and obstacles. Secondly, subsequent to the adoption of a Global Political Agreement, many local conflicts will still require attention. The parties themselves, UNAMID, DDDC and local conflict management institutions established by the GPA, comparable to the Peace and Reconciliation Council envisaged by the DPA, will all have a

role to play in defusing tensions. But for peace to take hold in Darfur, the Panel recognises the importance of good neighbourly relations. Thirdly, different issues will require the participation of different sets of stakeholders. Inclusivity does not apply equally to all issues.

The National Context

145. A Darfur peace process will, over the next two years, be profoundly marked by two landmarks in Sudan's history. The first is the general elections scheduled for April 2010. The second, which is even more significant, is the referendum of January 2011 by which the people of southern Sudan will decide whether Sudan remains one nation or becomes two nations. These are national sovereign decisions that have been taken by the Sudanese, enshrined in the Interim National Constitution adopted after the conclusion of the CPA.

146. The endeavour to achieve peace in Darfur cannot be isolated from these momentous events. In the worst-case scenario, in which the conflict in Darfur continues while Sudan attempts to democratise and the nation discusses matters arising from the southern Sudan vote in the referendum on self-determination, the war in Darfur will undermine the legitimacy of these national processes, and in turn that will contribute to a continuation or aggravation of the problem in Darfur. In the best-case scenario, the conflict in Darfur would be settled so as to enable Darfurians to participate in free and fair general elections, and to make an input into the national debate about the future of the nation, confident that their voices have been heard before the South exercises its right of self-determination.

147. The DPA Abuja negotiations were based on the assumption that an agreement in Darfur would serve to buttress the CPA, enabling the Darfurians to join in the national renewal promised by the CPA. In principle, this was a sound premise. In reality, however, many Darfurians did not see the CPA as an opportunity to contribute to a national process of democratisation, with a responsibility to make unity attractive, but as a ceiling on their aspirations.

148. Subsequent peace processes have, for the most part, considered Darfur in isolation, rather than examining Darfur as part of the larger Sudan question. It is, in the view of the Panel, vital that the timing, participation and substance of the Darfur peace talks be organised in a manner that takes account of these wider national realities in which the people of Darfur have the right to be involved, and supportive of efforts to find a lasting solution to both the Darfur issue and the national question in an orderly, democratic, peaceful and legitimate manner. Darfurians must not be denied the chance to take part in these momentous decisions. Unless the parties to the conflict in Darfur are able to work out their differences in a speedy manner, the war, whatever the level of violence, is in danger of becoming intractable. An intractable conflict in Darfur will, in turn, be a veto on the ability of Sudan as a nation to move forward.

IV. THE SEARCH FOR PEACE WITHIN AND BETWEEN COMMUNITIES

149. The previous chapter highlighted the causes and nature of the war in Darfur. It also brought to the fore the extent to which tensions have exploded between and within communities, sometimes pitting relatives against one another. Peace within communities is an important but neglected part of the overall peace process. Indeed, sustainable peace in Darfur must start with securing peace within and between these local communities.

150. In the meantime, there are groups and individuals across Darfur who are working to bring people together. Their efforts are necessarily limited in scope and remain fragile because of the lack of an overarching peace agreement. Nor do they have the ability to establish security while large parts of the region remain actual or potential battlegrounds between the Armed Movements and the Government, and while there is neither disarmament nor the existence of strong law enforcement agencies. In this regard, the activities of the Darfur Peace and Stability Fund is essential and must be sustained as a prelude to the relaunching of the Darfur Joint Assessment Mission (D-JAM).

151. Peace efforts have been largely confined to laying the basis for co-existence. They have included opening markets, establishing the terms of mutual respect for inter-communal boundaries and law enforcement mechanisms, and common protection agreements. Such peace agreements may not be equitable or fair. In some instances, local power relations have been radically altered during the course of the conflict and communities, which were formerly resident and enjoyed jurisdiction over their land, must now pay for the privilege of farming the land, dependent on the goodwill of those who were their adversaries during the war. Nonetheless, such agreements demonstrate the capacity of Darfurian communities to re-establish the basis for co-existence.

152. In substantial parts of Darfur, there is a degree of normalisation such that locally-specific initiatives to provide security and material benefits to residents can work. The major demands include education, health services, food and livelihoods, alongside courts, police services and security in the face of lawlessness or arbitrary actions by the security services. The standard means for international agencies to respond to such needs is through quick-impact projects, but in the case of Darfur, where confidence building is so crucial, the Panel believes that it is also important to offer quick start-up projects that can be sustained over long periods.

153. While rural communities are actively engaged in practical problem-solving measures, which are leading to local peace and reconciliation, some IDP communities, and especially their leaders, became isolated from these processes and appeared to be focused on maximising their political demands. Over the last few years, this combative approach has generated high-level attention leading to resource flows to IDP camps and political attention, including regular visits by journalists, celebrities and foreign politicians. However, with the

passage of time, ordinary IDPs are getting on with their lives, developing new livelihoods based on their new realities, where they can.

154. The Panel visited, on many occasions, IDP camps in Darfur. It listened to the frustrations expressed by many IDPs regarding the continuing refusal by most of the rebel groups to participate in peace negotiations. There is also widespread frustration among IDPs with the divisions among the Armed Movements and their seeming inability or refusal to unite and spell out a common position and participate in the negotiations.

155. The IDPs have some important demands which reflect basic rights and realistic political entitlements. Their key concerns include: peace and security; the right to return to their homes and the problem of new settlers on land that is theirs (including some settlers who are allegedly non-Sudanese); compensation; rehabilitation of villages; securing means of livelihood and the provision of services.

156. In the final analysis, grassroots inter-communal peace and reconciliation are critical to long-term peace in Darfur and more generally in Sudan, and should be part of a comprehensive strategy, as discussed in greater detail in Chapter Three.

V. REVIEW OF PAST AND ONGOING PEACE PROCESSES

157. The Darfur Peace Agreement of May 2006 represents the most significant effort to achieve comprehensive peace in Darfur. However, the DPA was only one in a succession of processes aimed at establishing a ceasefire and concluding peace between the Armed Movements and the Government. It is necessary to review and analyse these experiences and the reasons for their failures.

Early Efforts under Chadian Mediation: The N'djamena Humanitarian Ceasefire Agreement

158. The earliest attempts towards peace was the mediation process undertaken by President Idriss Déby Itno of Chad, which resulted in the adoption of a ceasefire agreement signed by the Sudan Government and the SLM/A on 3 September 2003, in Abeché, Chad. This was a 45-day ceasefire which was neither fully respected nor renewed. Shortly thereafter, the AU proposed its own involvement as co-mediator.

159. Ceasefire negotiations started on 31 March 2004, in N'djamena, under the auspices of President Déby. Nine days later, the parties signed a Humanitarian Ceasefire Agreement and a

Protocol on Humanitarian Assistance, and agreed to create a team of military observers with a small force to protect them, called the African Union Mission in Sudan (AMIS).

160. One major flaw of the Humanitarian Ceasefire Agreement was that it existed in two versions. After the SLM had signed, the Sudan Government insisted that the agreement should also include a provision for the assembly of the Armed Movements' forces in selected sites. This was inserted into the text without obtaining the prior agreement of the Armed Movements, which categorically rejected the addition.

161. A Ceasefire Commission (CFC), based in Darfur itself, was formed in El Fasher. The CFC reported to the Joint Commission, based in N'djamena. The principal task of the CFC was to collect information on violations and submit reports to the Joint Commission. However, the CFC and AMIS lacked capacity to monitor the ceasefire and the Joint Commission was not empowered to sanction ceasefire violators. The ceasefire was soon violated by both sides. The AMIS mandate did not extend to the protection of the civilian population. However, the Ceasefire Agreement coincided with a dramatic drop in the number of violent fatalities in Darfur and a rapid improvement in humanitarian access.

The Context of the Comprehensive Peace Agreement (CPA)

162. The early stages of the Darfur peace process unfolded against the backdrop of the negotiations to reach a peace agreement for the long-running war between the Sudan Government and the SPLM/A. The first breakthrough in the talks was the Machakos Protocol signed in July 2002. The second was the signing of a framework agreement in May 2004. By this time, many were hopeful that the Darfur conflict could be settled within the CPA framework. However, the Sudan Government was unwilling to make additional concessions to Darfur. The SPLM was eager to proceed with completing the CPA negotiations, and it was evident that the Darfur Armed Movements were not ready for peace talks. In addition, the SPLM Chairman, Dr. John Garang, promised that as soon as a new Government of National Unity was formed, ending the conflict in Darfur would be his personal priority.

163. The untimely death of Dr. Garang on 30 July 2005, just 21 days after he assumed the post of First Vice President of Sudan, dealt a blow to the hope that the Darfur conflict would rapidly be settled within the CPA framework. Nonetheless, the CPA provided the "mother agreement" for efforts directed at Darfur. Through its mechanisms for democratisation and devolution of power, and its provisions for respecting local languages and cultures, the CPA deals with many of the issues of concern to Darfurians. However, rather than seeing the CPA and its democratisation provisions as an opening through which they could gain their political rights by democratic means, many Darfurian leaders instead saw the CPA as an exclusive agreement that privileged southern Sudan at their expense. Both parties to the Darfur conflict also failed adequately to grasp that the CPA was the last chance for Sudan to maintain national unity, and that delays in its implementation could jeopardise the CPA's project of "making

unity attractive." The absence of a forum that could allow the Darfurians and other Sudanese to establish a common understanding of their joint demands and aspirations for democracy, development and unity contributed to this damaging misunderstanding.

The AU Abuja Process and the Darfur Peace Agreement

164. Immediately following the N'djamena Agreement and the operationalisation of the CFC, the AU initiated the Inter-Sudanese Peace Talks on Darfur. The aim of these talks was to deal with Darfur in a decisive and comprehensive manner that would be complementary to and supportive of the CPA. Including JEM as well as the SLM, the talks began in Addis Ababa on 15 July 2004 and subsequently shifted to Abuja, where the second round was opened on 23 August 2004.

165. After almost a year of talks, the Parties signed a Declaration of Principles (DoP) during the fifth round of talks on 5 July 2005. This was and remains the sole framework agreement signed by the Sudan Government, the SLM and JEM. The sixth round of talks, in September 2005, was overshadowed by the deepening rift within the SLM/A, which ultimately led to the SLM/A-Abdel Wahid and the SLM/A-Minawi sending separate delegations.

166. The final round of negotiations began in Abuja in November 2005. The negotiations took place in three commissions, namely, power-sharing, wealth-sharing, and security arrangements. These talks were intensive, protracted, and made little progress towards agreement on the core issues.

167. The power-sharing commission was concerned with the Darfurian representation in the central Government, Darfurian quotas in national institutions, the status of Darfur as a single region, the borders of Darfur, and representation in Darfurian power structures. The parties entered the final round of negotiations with their positions on these questions far apart, and they scarcely shifted at all during the subsequent months.

168. A highly significant constraint on progress in the power-sharing talks was the Armed Movements' perception that the CPA took precedence over any agreement for Darfur, and that the CPA inflexibly allocated the most senior positions in the Executive and the majority of positions in the Legislature to the Parties to the CPA, namely the NCP and SPLM. The CPA thus appeared to rule out Darfurians' demands for a Vice President, for a single Darfur Region, and for a substantial quota of seats in the National Assembly. More broadly, JEM argued that its own national agenda for national transformation was ruled out of order by the CPA framework. The Mediation text remained within the limits set by the CPA, which was the major substantive reason why it did not prove acceptable to the Armed Movements.

169. The wealth sharing commission was able to reach agreement on most of the areas of dispute, including land and financial arrangements for state budgets and development. The issue of compensation proved a major stumbling block, with disagreement focused on the amount of money to be provided to the Compensation Fund as a first instalment.

170. Discussions in the security arrangements commission were problematic, with the parties holding fast to extremely divergent positions. The Mediation proposed an Enhanced Humanitarian Ceasefire Agreement to try to bridge the gaps, hoping that it would prove a prelude to negotiations on comprehensive security arrangements. This proved a mistaken assumption, as JEM and SLM-Minawi insisted on only signing a ceasefire when the full political agreement was in hand. Despite this, the Mediators were able to reach agreement on almost all the security issues, including ceasefire arrangements and disarmament and demobilisation, with the question of the absorption or integration of Movement combatants remaining the last divisive question. In the event, the final security arrangements chapter was accepted by all the parties at Abuja, although the Government of Sudan expressed reservations on key issues.

171. The DPA also provided for the DDDC, which was envisaged as a tool for popularising the DPA and enabling peace between the belligerent parties to become the basis for consolidated local peace. In the absence of a workable agreement, the DDDC has been obliged to adjust to the political realities. With the assent of the signatory Parties to the DPA, and the support of the AU and its partners, the DDDC has instead become an invaluable interim mechanism for creating the building blocks for an inclusive peace process.

172. Two important issues were notable by their absence from discussion at Abuja. One was the identity of a peacekeeping force: while the Armed Movements demanded a UN or NATO force, the Sudan Government insisted on keeping AMIS. In March 2006, when the UN and AU obtained agreement from the Sudan Government for the transition from AMIS to an AU-UN force, the UN Security Council instructed the Mediator to bring the Abuja talks to a rapid conclusion, giving him a deadline of 30 April.

173. The other issue was accountability and justice. The rationale for this omission was that the matter had been referred to the ICC by the UN Security Council in Resolution 1593 of 31 March 2005. In retrospect, this omission was an error. Resolution 1593 also called for efforts towards truth and reconciliation and did not in any way preclude domestic efforts aimed at accountability.

174. The entire negotiation process was marked by the external orientation of the Parties. The Sudan Government was only reluctantly negotiating with the Movements and saw the exercise principally as a proxy for making an agreement with the U.S., on the assumption that the U.S. would be able to deliver the Armed Movements. The Movements were concerned less with negotiating with the Sudan Government than with appealing to the international community to recognise the justice of their cause and extend support to them. In this context, little progress was made in reaching substantive agreements between the Parties.

175. On 25 April 2006, with the UN Security Council meeting just six days away, the Chief Mediator submitted to the parties a comprehensive set of his own proposals for a Darfur Peace Agreement affirming that this represented a fair, comprehensive and workable solution. The Parties had less than a week to go through and reflect upon the 87-page text, and no opportunity to consult extensively with their constituencies. In the event, the DPA was only signed by two parties, the Government of the Sudan and the SLM-Minawi. The two other Movements that had participated in the talks refused to sign it: SLM-Abdel Wahid and JEM.

176. The Inter-Sudanese Peace Talks on the Conflict in Darfur suffered from a number of significant shortcomings that made the process frustrating and flawed. Until the very end of the talks in May 2006, the Parties tended to see the Abuja talks as a tactical forum rather than the central stage on which a solution to Darfur's conflict would be found. Throughout the entire negotiating process, fighting continued on the ground in Darfur, both between the Sudan Government and the Movements and among the Movements themselves. Rarely did any of the Parties work constructively with the Mediation in search of solutions. The international insistence on tight deadlines and the way in which the peace talks were made secondary to international efforts to bring UN peacekeepers to Darfur precluded the Mediator from developing a strategy that was sensitive to the complexities of the Darfur conflict. The biggest shortcoming was that the only process of consultation with the Darfurian people was planned for *after* the conclusion of the Agreement, rather than as a prelude and precondition for it. Without popular understanding, let alone support, the DPA was immediately condemned by large constituencies within Darfur, which instantly doomed it.

The UN-AU Joint Mediation, 2007

177. Since Abuja, there have been two efforts to revive the peace process, first under the two Special Envoys from the UN and AU, and subsequently under a single Joint Chief Mediator. These initiatives have not succeeded.

178. After repeated deadlines for the non-signatory Parties to accede to the DPA had passed, the AU and the international partners initially took the position that there was no further negotiation to be pursued, and that the only task was for the non-signatory groups to join those who decided to sign a "Declaration of Commitment" to the DPA. By the end of 2006, this approach had clearly become unsustainable. The AU and UN jointly decided to ask Ambassador Jan Eliasson and Dr. Salim Ahmed Salim to become joint Mediators, on a part-time basis, for a revived Darfur peace process.

179. The two Mediators faced a host of difficulties. These included the uncertain status of the DPA (accepted by its signatories including the Sudan Government, but rejected by the others), and the changing nature of the political-military terrain in Darfur. The position, within the negotiating framework, of the SLM-Minawi, which signed the DPA, remained uncertain. During the post-Abuja period, the Armed Movements splintered to the extent that it proved

impossible to put together a cohesive representation. While the SLM/A groups disintegrated, JEM became more powerful, though its aspirations to political and military dominance did not appear to reflect its support among Darfurian constituencies. In addition, large sections of the Darfurian Arab community expressed their dissatisfaction at their exclusion. For this reason, the Panel notes that their representation in any peace process is a precondition for its success. Frustrated by the shortcomings of the political leadership, Darfurian civil society actors were also becoming more assertive and demanded a place at the negotiating table, or at least a mechanism whereby their interests could be represented. Non-belligerent parties, including civil society, proved themselves capable of articulating important elements of a substantive agenda.

180. The two Mediators began their task at the beginning of 2007. They consulted widely, including holding consultations with civil society groups, facilitated by the DDDC, and decided on a three-stage plan: (a) securing a common position among the Governments of the region including Libya, Chad and Eritrea; (b) securing a common negotiating position as a minimum requirement among the Armed Movements; and (c) opening direct talks. The first was accomplished through a series of visits and consultations with the Governments of the region. The second made halting progress with a partially successful meeting in Arusha, Tanzania. But by then, it had become virtually impossible for the multiplying factions of the Movements to arrive at a consensus. When the talks finally convened in Sirte, Libya, in November 2007, the Movements' representation was grossly insufficient and the talks did not make any progress. They reluctantly conceded that their goal of an inclusive peace agreement by December was not going to materialise, and that new thinking was required.

From AMIS to UNAMID

181. Throughout 2007, the peace negotiations were conducted in the shadow of international efforts to bring a UN peacekeeping force to Darfur with a Chapter VII mandate drawn from the principle of the "Responsibility to Protect." These efforts consumed far more time, effort and political capital at an international level than the revived Joint Mediation. In August 2006, the UN Security Council passed Resolution 1703, which authorised a Chapter VII UN Mission without the consent of the Sudan Government. President Omar al Bashir categorically rejected the Resolution. When the reluctance of the UN Security Council to impose such a Mission on Sudan became evident, a compromise was sought in the form of a hybrid AU-UN mission. This was agreed in principle at a meeting in Addis Ababa in November 2006, with an agreement that the UN would provide interim assistance to AMIS in the form of a "light support package" and a "heavy support package." Sustained negotiation led to the passing of Resolution 1769 in July 2007, which created the UN-AU Hybrid Operation in Darfur (UNAMID) and set a handover date of 31 December 2007. By that time, it was envisaged that the Joint Mediation would have secured an inclusive agreement and the UN's "heavy support package" to AMIS would be in place. In the event, neither of these conditions were met, and

UNAMID inherited a neglected AMIS force, without any substantial additional logistical support or reinforcements, and no peace agreement.

182. From its inception in April 2004, AMIS faced a daunting task. It was small, with insufficient logistics and a limited mandate. While the Government of Sudan was reluctant to see any other international peacekeepers in Darfur, the Armed Movements saw AMIS as an unsatisfactory alternative to the armed intervention by NATO or a Chapter VII UN force they were demanding. AMIS was also the first major peace support operation conducted by the AU, which simultaneously had to build its peacekeeping capacity at headquarters and field level, while also implementing an exceptionally challenging operation.

183. The success of AMIS was further hampered by recurrent shortages of money and logistics. Frontline soldiers in UN peacekeeping missions are paid regularly, even if the financial contributions to the UN are slow in arriving. AMIS was compelled to operate on a hand-to-mouth basis, which frequently led to the soldiers not being paid for months on end. The Mission lacked essential infrastructure and logistics, including helicopters. Even after the UN promised the prompt delivery of the support packages in 2007, almost nothing was forthcoming in reality. In addition, the intense publicity debate over the importance of a UN force was conducted at the expense of AMIS. The advocates of UN troops made their case on the basis that AMIS was not able to do the job. The most telling blow to AMIS was an attack on the Group Site at Haskanita in September 2007, in which eleven AMIS soldiers lost their lives. The morale of the troops suffered accordingly.

184. The arrival of AMIS coincided with a substantial fall in the number of killings in Darfur. While other factors were at work, the presence of AMIS on the ground was undoubtedly an important contributor to this development. At a time when no-one else was willing to send troops to Darfur, Africa did so. The Force Commander and his officers were compelled to improvise, in every respect, and did so, to good effect. Subsequently, the level of violence, both among combatants and against civilians, showed a downward trend. This is an objective indicator of success, for which AMIS ought to be credited.

185. In addition, the exceptionally severe constraints on AMIS must be recognised. The Mission was vulnerable to attacks and reliant on the cooperation of the Government of Sudan for its essential logistics. It was operating with a limited mandate and capacity in a situation in which there was no peace to keep. International promises of support were not forthcoming and the international verdict on the Mission had already been written as a failure. The reality of these constraints was illustrated following the transfer of authority to UNAMID on 31 December 2007, after which the UN faced many of the same constraints, and was not able to reach or surpass the operational capability of AMIS for many months.

186. Lastly, the African character of AMIS and UNAMID contributed to some of their under-acknowledged successes. The changing nature of the conflict in Darfur after 2005 meant that much of the most important work of the Mission was done by civil and political affairs officers, the DDDC, and commanders operating as local mediators rather than conventional

peacekeepers. In this regard, the important contribution of the Civil Affairs Department of the UN Mission in Sudan (UNMIS), which worked alongside AMIS from 2005-07, before it was transferred to become the UNAMID Civil Affairs Department, must be recognised. This work on the ground, among communities and with local commanders on all sides, made an essential contribution to the gradual lessening of insecurity and local conflict across many parts of Darfur. Similarly, the work of AMIS and UNAMID troops and civilian police, the civilian components of the Missions, have been instrumental in building confidence among the people of Darfur. In its engagement in Darfur, the Panel drew extensively on the expertise, experience, confidence, and capacity of Civil Affairs, Political Affairs and the DDDC. Even while the formal peace process has stalled, these departments have been making a substantial contribution to building peace in Darfur.

187. UNAMID is a pioneering joint mission between the AU and the UN. It is an exemplar of two multilateral organisations working together, each contributing its strengths and compensating for the other's limitations. Without question, the experience, the capabilities and the logistical, financial and administrative systems brought to bear by the UN DPKO have transformed the capabilities of AMIS. Meanwhile, the role of the AU, and the predominantly African character of the Mission, have enabled it to grapple with the complex political problem that Darfur represents. Any peace support operation of this magnitude and complexity, operating in the territory of a functioning and sovereign State, requires good cooperation with the national authorities. Given the suspicions that existed between the Sudan Government and the United Nations, the AU's role in mitigating that mistrust without compromising on basic principles allowed the Mission to broker the Tripartite Agreement which enables the logistics and administration to function with the active cooperation of the Sudan Government. The African character is also manifest in the successes of the civilian components of UNAMID, as well as the DDDC (which is associated with the AU). In reporting equally to both the AU Peace and Security Council and the UN Security Council, the UNAMID leadership is in an excellent position to obtain the maximum international political leverage and access. The Panel noted the importance of this joint or hybrid character of the Mission, and is hopeful that the AU and UN will be able to maximise the comparative advantages of the two organisations, so that UNAMID not only serves the people of Darfur but also serves as a model for future collaboration, consistent with the provisions of Chapter VIII of the UN Charter.

The UN-AU Joint Mediation, 2008-09

188. In June 2008 a single full-time Joint Chief Mediator (JCM), Mr. Djibril Bassolé, was appointed in order to revive the peace negotiations between the Sudan Government and the Armed Movements. Shortly after Mr. Bassolé's appointment, the Emir of Qatar offered to convene peace talks in Doha and since then that city has hosted the peace process.

189. The JCM approached his task in a manner different from his predecessors. He sought to deal first with the military conflict, between the Sudan Government and JEM, aiming to use this as a basis on which to build a political settlement. Supported by some international partners, he focused exclusively upon JEM, as a cohesive and militarily capable movement. In February 2009, the two Parties agreed on a Declaration of Intentions, but unfortunately, this was repudiated by JEM the following month after the International Criminal Court announced the arrest warrant for President Omar Al-Bashir. Subsequently, Mr. Bassolé prepared a four-point plan involving prisoner releases and a cessation of hostilities, leading to renewed talks. He also asked the two Parties for their proposals for a Framework Agreement.

190. The Panel observes that it is important that the JCM should base a strategy on consultation with a wider spectrum of Darfurian and Sudanese stakeholders, taking their views into account in the formulation of his approach. It notes that there are important achievements of prior mediation efforts, such as the 2005 Darfur Declaration of Principles, that have been agreed to by all belligerent parties and can be built upon. The Panel also considers it important that any mediation strategy should be framed by the upcoming General Elections and the schedule for the completion of the timetable for the CPA. Any peace agreement, and especially any ceasefire or security arrangements, reached under the auspices of the Joint Mediation, will need to be implemented in close partnership with UNAMID. The JCM's strategy would therefore benefit enormously from drawing upon the expertise of UNAMID officers and civilian staff as much as possible.

191. In June 2009, the JCM adopted a new approach. This involved consultations with some of the Armed Movements who have hitherto not participated in the Doha process, meeting with nomadic groups, initial consultations with civil society, and requesting inputs from UNAMID.

192. The Panel welcomes these efforts and, at the same time, urges the JCM to spell out his strategy for pursing the peace process. The AU Panel remains hopeful that Mr. Bassolé will draw substantively upon the consultations undertaken by the Panel, as well as the expertise within UNAMID and the DDDC.

VI. THE REGIONAL DIMENSION: THE SEARCH FOR PEACE BETWEEN SUDAN AND CHAD

193. Relations between the Governments of Sudan and Chad, which were excellent during the 1990s, and remained so up to the early days of the Darfur war, rapidly degenerated during 2004 and 2005, to the extent that the two countries were in a state of undeclared war by December 2005. The two countries continue to accuse each other of supporting and harbouring rebels hostile to the other.

194. There has been a succession of efforts led by, among others, the AU, Libya, Congo-Brazzaville, Eritrea, Senegal, Saudi Arabia and Qatar, which have included monitoring and patrolling the Chad-Sudan border, denying armed groups permission to cross the border, and normalising relations between Chad and Sudan. The Panel, which has visited Libya three times, is aware of the importance of Libya in bringing peace to Darfur.

195. While agreement between Chad and Sudan remains a prerequisite for peace in Darfur, peace between Sudan and Chad remains unlikely without a settlement in Darfur.

196. The optimism that arose when Chad was a full partner in the mediation effort, is unlikely to re-emerge for some time to come unless both Khartoum and N'djamena are serious about returning to the negotiating table. A solution that has the confidence of both States and delivers stability for Darfur is urgently needed. This would include ending the flow of arms and insurgents across each other's borders. It also requires unilateral measures to be taken by both Governments to defuse the tensions between the two countries, and the participation of other States that have influence in either N'djamena or Khartoum. In this regard, the Panel has been informed by the Government of Sudan of its decision to unilaterally take steps to move the Chadian rebels a considerable distance away from the Sudan-Chad border. Moreover, both Governments need to have a common understanding of the centrality of Darfur to the survival and success of their respective national projects for democratic transformation, sustainable development and national unity. There is no need for new agreements between Sudan and Chad, as there is now a substantial body of Agreements. What is required is the political will, on both sides, to put aside their differences and work for peace by implementing these Agreements.

CHAPTER 3

THE IMPERATIVE OF JUSTICE, ACCOUNTABILITY, RECONCILIATION AND HEALING

I. INTRODUCTION

197. More than six years after the recognised beginning of armed conflict between the Armed Movements and the Government of Sudan, and more than seven years after widespread armed conflict began in Darfur, Darfurians are still waiting for justice, accountability and the beginning of a process of healing through reconciliation. Darfur remains insecure and unstable, and thousands of Darfurians continue to live in refugee and displaced persons camps, unwilling or unable in the current environment to venture back to their homes. The devastating human, psychological, social, political and economic consequences for individuals, families and the region as a whole are incalculable. The attacks against civilians forced an estimated 2.7 million people to become displaced, including around 250,000 refugees in Chad. Tens of thousands were killed or maimed and women and girls were raped, creating an immense need for justice, accountability and reconciliation.

198. The war has brought fear, insecurity and instability. People who had once entrusted their security to their Government have no faith left in its readiness or ability to protect them. By undermining trust, awakening or reinforcing prejudice and suspicions along the fault lines of "Arab" versus "African", or along tribal and clan lines within the groups identified as "Arab" or "African", the politics of the war have damaged the careful accommodations and connections that held Darfurians together. The cumulative impact is a profound loss of confidence in the integrity and capacity of the formal legal system, the structures of local government, traditional leaders and traditional methods for justice and reconciliation.

199. As Darfurians look ahead, they are seeking ways of coming to terms with their recent past and of creating new structures and relationships upon which they can found a brighter future. The prospects for peaceful development depend on whether they are given an opening to envisage, help to craft and implement appropriate policies and strategies for justice and reconciliation, and on their collective and shared willingness and ability to seize that opportunity. The Panel's hearings in Darfur reflected and confirmed the reality that as a result of a brutal conflict, which has lasted for more than six years and involved a range of actors, justice, accountability, reconciliation and healing are inter-linked and inter-dependent and must be looked at broadly. As a consequence, the solutions in this area must necessarily be holistic, and, given the range of measures that will be required, they should be procedurally

integrated into a workable system. The complex questions of accountability, arsing from the conflict, should not be left to Darfurians alone to grapple with. These issues engage all Sudanese who are therefore legitimate stakeholders in the justice and reconciliation discussion on Darfur since the matter has national legal and political significance.

II. THE FUTURE OF JUSTICE AND RECONCILIATION IN DARFUR: VIEWS FROM THE GROUND

200. In its encounters with Darfurians, the Panel questioned people from diverse groups and backgrounds on their definition of justice and reconciliation; the political, economic and social environment which can facilitate justice and reconciliation in Darfur; the tools, processes and institutions they were vesting their hopes in and trusted to dispense justice, unlock goodwill, facilitate dialogue and help them make progress towards reconciliation. In addition, they were asked what they regard as the stumbling blocks, what they hoped to achieve and, amongst other questions, how they thought their objectives could best be met. There were of course divergences and differences of emphasis. But these were relatively minor, compared to the consensus which emerged across the various groups in the three states of Darfur, as well as in Khartoum and among Darfurian refugees in Chad. Similarly, in its engagements with other Sudanese stakeholders, including members of the legal profession, the political parties, civil society representatives and international stakeholders, the Panel found broad agreement on the need for justice and reconciliation. Here, the differences in opinion emerged with respect to what measures should be adopted.

201. Although the Panel, in all its interviews and public hearings, posed questions separately about justice and reconciliation, there was considerable overlap in the answers, as illustrated below. This is not a result of a misunderstanding. It reflects the reality that questions of justice and reconciliation are broadly conceived and cannot be neatly separated. Those responses which are tailored specifically to the discussion on reconciliation appear later in the chapter.

What Are the Current Major Obstacles to Justice and Reconciliation in Darfur?

- Absence of political will;
- Denial of what happened and is happening in Darfur, as well as obscuring of the truth;
- War, fear and insecurity;
- The unwillingness of all the parties to work together in finding a solution to the war;
- The spread of weapons;
- Poor policing and enforcement of law and order;

- Impunity for the crimes committed in Darfur;
- The absence of confessions and apologies;
- Unwillingness to use the law to attend to violations of human rights;
- Failure to reform the judiciary;
- Lack of a sufficient number of qualified personnel in the judiciary;
- Lack of functioning mechanisms to implement agreements;
- Non-compliance with agreements;
- The breakdown of customs and traditions, for example the *judiya* method of mediation. This has come about because of the political nature and magnitude of the war; poor security; the economic inability of much of the population to pay "blood money" (*diya*) as compensation for loss of life; mutual suspicions; and the weaknesses of the native administrations;
- Unfair distribution of power and wealth in the country;
- The absence of economic development in Darfur;
- The negative attitudes of those with power and weapons because they discourage reconciliation;
- The extent to which native administrations have become marginalised and remote from people. Overwhelmed by the problems in Darfur, they do not have adequate powers and resources and they have also become too involved in politics.

What Factors Would Facilitate Justice and Reconciliation?

- Peace, a secure environment free of weapons, demobilisation and reintegration of combatants, stability;
- Protection of human rights, including freedom of opinion and expression;
- Respect for the rule of law;
- Judicial reforms that will lead to an autonomous and impartial judiciary;
- Investigations of human rights abuses;
- Presenting an accurate picture of the situation in Darfur;
- A capable, impartial and politically neutral native administration;
- Lack of sympathy for the perpetrators of crimes, and refusing to accord them the protection of the tribe or to escape justice by paying *diya*;
- Admission of crimes and mistakes, apologies, requests for forgiveness and truth-telling by the responsible individuals;
- Prosecution of individuals suspected of crimes in Darfur by competent and independent courts which would accord them fair trials;
- Payment of individual and collective compensation and return of looted property;
- Payment of *diya*;
- A fund from which *diya* could be paid and courts to enforce the payment;
- Adhering to the customs and traditions which regulate disagreements and quarrels within and between tribes and groups, for example the *judiya*;

- Adopting new approaches and techniques to adapt and strengthen the old justice and reconciliation structures, which have become weak or overtly political, so they can work in the Darfur of today;
- Return to the *hakura* system of land ownership.

III. GIVING SUBSTANCE TO JUSTICE AND RECONCILIATION

202. The people of Darfur, and of Sudan, whose views on justice and reconciliation the Panel canvassed with regard to Darfur, offered a range of suggestions for practical action, both in the short and medium term, as well as long-term solutions. Their views were clear, practical and insightful. Now that their views have been sought and articulated, the question is how to give substance to their ideas and aspirations. The constraints on justice, reconciliation and healing, in the midst of a war and a political stand-off between the Government and the Armed Movements, is self-evident. The importance of restoring peace and order was therefore reiterated time and again in the Panel's hearings throughout Darfur. Only when security is no longer their overriding preoccupation can the majority of Darfurians feel confident enough to take bold steps towards the future, seize ownership of their problems, rebuild trust, come together to collectively examine perceptions of injustice, however they are defined, seek redress, engage with Government institutions from a position of strength and undo the wrongs, damages and mistakes of the past six years.

IV. ENGAGING WITH JUSTICE

203. The premium which all its interlocutors placed on justice was apparent to the Panel throughout its visits to Sudan. Although they frequently prefaced their positions with support for international justice, the people of Darfur demonstrated a varied and rich understanding of justice and reconciliation. Their most immediate demand was for protection and security guarantees, followed by a political settlement that can lead to an equitable distribution of wealth, development, the rule of law and a political system that gives them a significant say over their own affairs within Darfur. With justice defined as a value that should impinge on their daily lives - from the provision of security and the rule of law, through measures such as disarming the militia, an end to predatory policing, and the need for security agencies that act in their collective interests - it is obvious that no single conception of justice can meet these needs. At the same time, they, like other Sudanese the Panel spoke with, demonstrated their comfort with the pluralism of their legal heritage, drawing on their traditional culture, religious jurisprudence, while calling for sound, reliable and independent formal institutions of justice.

204. The scale of the atrocities in Darfur, and the inability of external justice mechanisms alone to address the full extent and impact of the crimes, requires that Darfurians must look within Sudan for the fuller range of justice options for dealing with what has happened in Darfur. In the context of a political resolution of the Darfur crisis, the question of justice and reconciliation must be confronted by the Sudanese people themselves, who should make demands of their Government to undertake the necessary changes that will end impunity and foster reconciliation.

205. An outcome which would promote national justice and reconciliation proceedings is therefore required. Its principal goal would be to give the people of Darfur access to a credible, comprehensive and coherent system of justice within their own country, implemented in close consultations with Darfurians and Sudanese more generally, and Sudan's partners, including the African Union. Criminal justice will play an important role, but not an exclusive one, and must be underpinned by procedures that allow for meaningful participation of victims, as well as reparations and other acts of conciliation. Within the criminal justice system, the investigations, prosecutions, defence and judiciary must work in tandem, or in smooth sequence. Weaknesses in any one element of a criminal justice process would undermine the prospects of a successful outcome. Thus, inadequate investigations will not result in effective prosecutions; an under-resourced judiciary on the other hand would be unable to cope with the work generated by effective investigations. In order to respond effectively to the violations in Darfur, the system will need to draw upon Sudan's rich legal heritage, including Sharia (Islamic) law and practice, to the extent that Sharia emphasises the participation of victims in proceedings and the making of reparations. Traditional justice models with their focus on conciliation and wider participation of the community also provide viable mechanisms for dealing with the past. Truth-telling and an independent and informed analysis of the past, in order to draw out the lessons of Darfur for Sudan, should also be given priority, as an investment in the stability of Sudan. All these components, as well as any additional justice and reconciliation mechanisms, need to work together to achieve an effective response to the situation in Darfur.

206. As with peace, interventions in the justice sector should be underpinned by the political will to bring about real changes, some of which will require legislation. This means that resources will have to be committed to the justice and reconciliation project, including for compensation and reparations ordered to be paid during proceedings. Independence of the judiciary is a cornerstone of the rule of law, a prerequisite for engendering trust in justice. This value, which is enshrined in the Interim National Constitution, must be scrupulously protected. If Sudan's judges are not perceived as being outside of the direct or indirect influence of the Government, then Sudanese will continue to be sceptical of the justice system, and it will not work. The prevailing lack of confidence in justice among many is a consequence of the steps the Government has taken, or failed to undertake, with respect to the justice system. Time and again, the Panel was told during its consultations that many of Sudan's trained and experienced judges had been forced to leave their country and now served elsewhere, especially in the Gulf States. Others were forced out of their jobs but remained in the country. For many in Sudan, these exiled judges, and their colleagues who stayed in Sudan, are a

reminder of a compromised judicial system. However, the Panel believes that these former judges should now be regarded as a potential legal resource for the reinvigoration of the justice system in Sudan, and for handling the Darfur caseload. Lawyers, including in Darfur, have also encountered difficulties in practicing their profession; those who challenge the Government, or who seek to take steps to defend human rights, have sometimes been targeted and harassed by the authorities. Such events have contributed to the loss of confidence in the justice system. Justice for the past cannot be credible if injustices continue to be a feature of the present situation.

207. The conflict in Darfur is not yet over, even if it is now generally acknowledged that the violence has radically decreased in intensity and altered in its patterns. Although the full range of justice options cannot be delivered in the current environment, which remains uncertain, and in the areas which are still insecure, this does not mean that no justice and reconciliation measures can be undertaken. On the basis of an analysis of the options, informed choices can be made about the type of activities that could already be implemented for the benefit of the people of Darfur. The Panel considers that it is possible at present to carry out some criminal investigations capable of sustaining prosecutions. In any event, evidence can be identified and preserved for further investigations or use in future proceedings. Indeed, it is precisely such beginnings in the current environment which would give the people of Darfur confidence in the Government's commitment to bring an end to impunity. Nothing the Panel says in this Report should therefore be regarded as a justification for delaying necessary action with regard to justice and reconciliation.

V. THE FRAMEWORK FOR THE DISCOURSE ON JUSTICE: THE LEGAL HERITAGE AND SYSTEM OF SUDAN

208. Africa's largest country is a diverse society of different religious, ethnic and social groups. Its laws reflect, and have been shaped, by these multiple identities and a heritage encompassing Turkish, Egyptian, British and Islamic influence, as well as the traditional and cultural norms of Sudan's varied communities. At independence in 1956, the imprimatur of the colonial experience upon Sudan's legal infrastructure was distinct, much of its content and conventions derived from the British Common Law tradition. Sudanese lawyers and judges, returning from the Universities of England and Wales and the Inns of Court in London, reinforced the influence of the British Common Law approach. After independence, in parallel with its political transformations, Sudan continued a search for a national legal identity. For a period, it adopted the Egyptian Civil Code derived from the French civil law. In September 1983, President Jaafar Nimeiri passed several decrees, which came to be known as the "September Laws." These re-introduced Sharia, which the British had confined to personal matters, as a source of formal law in Sudan. Today, the main sources of Sudanese criminal law are the Criminal Act of 1991 and the Criminal Procedure Act of 1991.

209. Sudan has an ancient judicial heritage. As early as the mid-15th century, Suliman Ibn Ahmed Ibn Sufyan established a judiciary with the first Sultanate of Darfur. The national judicial system has developed with the changing political landscape. Today, the 2005 Interim National Constitution provides for a hierarchy of courts, at the summit of which is the Supreme Court. Sudan's judiciary enjoys the guarantees of formal independence found in most national jurisdictions. The institutions to safeguard this independence include the National Judicial Service Commission. For the administration of criminal justice, considerable powers are conferred on the Chief Justice, who can issue detailed circulars or guidance to judges on criminal justice matters (section 212, Criminal Procedure Act).

210. Established in 1998, the Constitutional Court stands outside the national judicial hierarchy and therefore has no appellate jurisdiction. Amongst other responsibilities, it convenes to hear and determine the constitutionality of laws, to hear cases of individual citizens' rights guaranteed by the Constitution, and to rule between different courts on matters of jurisdiction.

The Criminal Courts System

211. Darfur is in dire need of a criminal justice system which will respond forcefully and efficiently to crimes that have been committed. Sudan's judiciary has a critical role to play in this process. In general, the judiciary is composed of separate hierarchies for civil matters and for Sharia. Various courts exercise criminal jurisdiction in Sudan including: the regular courts; special mixed security courts; military courts and tribal courts. At the apex of this system sits the Supreme Court, or Court of Cassation, which serves as the final court of appeal. There is a hierarchy of criminal courts within each state. The Chief Justice has the power to create Special Courts, and confer them with particular thematic jurisdiction. The Special Criminal Courts on the Events in Darfur were set up pursuant to this power. Article 127 of the 2005 Interim National Constitution also allows for legislation to establish further national courts as may be required.

The Substantive Law: Sharia

212. Though its application, particularly with respect to criminal law and sentencing, has been controversial in its history, and has been widely condemned in various quarters, Sharia remains part of the law of Sudan. However, the Interim National Constitution, in carefully negotiated provisions, restricts Sharia to the predominantly Muslim Northern States of Sudan (of which Darfur is a part), making special provision for the mixed population centre of the capital, Khartoum. Sharia is not applied in the Southern States. With respect to Northern States, Article 5 of the Constitution declares "Islamic Sharia and the consensus of the people"

to be the source of legislation. For Southern Sudan, "custom" is given similar recognition. Of special relevance to the discussion on Darfur is the possibility, under the Criminal Act, 1991, for courts to set aside sentences of retribution (*qisas*) in certain circumstances. This includes where victims of the crimes opt to receive compensation instead. In such cases, which include crimes involving murder and intentional wounding, the court may order the payment of *diya* instead of the generally severe primary sentences. It is these aspects of Sharia which allow for victim participation in proceedings, and the possibility of remitting sentences of retribution, which some have identified to the Panel as potentially contributing to reconciliation in the context of Darfur. Yet in the application of Sharia principles, great care should be taken to protect victims from undue state or societal pressure to opt for *diya*, otherwise the system will lose all credibility. In any event, the possibility of *diya* should not be used as a reason to dispense with the formal fact-finding and a trial process which will allow the full facts to be formally established. It is crucial, in order to satisfy the need of the victims and of the society for the truth about the past, that all justice processes should be based on reliable evidence and credible adjudication of the facts.

Conciliation by the Judiciary

213. Sudan's criminal courts are empowered to promote reconciliation as a way of preventing formal proceedings and bringing disagreements to an end. Members of the Sudanese judiciary cited how, during criminal proceedings, the judiciary have encouraged conciliation between groups involved in disputes over control of territory and have arranged for the payment of compensation.

214. Such creative use of the powers of adjudication demonstrates the potential of the formal justice system for addressing the manifestations of violence within the context in which it occurs, going beyond the mere attribution and punishment of criminality. Although these approaches might not be applicable to some of the more serious crimes committed in Darfur, especially where State actors are the perpetrators, their potential for dealing with offences arising from disagreements between communities demands proper consideration. Crimes arising from clashes over land rights and resources, or violence between nomads and farmers, cannot be answered by prosecutions and punishment exclusively. They require the adoption of methods, within or additional to the criminal process, which will encourage communities to reach peaceful accommodations with one another. The key here will be to develop the capacity to identify types of cases which lend themselves to a broader method of criminal adjudication.

VI. COMBATING IMPUNITY: LIMITATIONS IN THE LEGAL FRAMEWORK

The Special Criminal Courts on the Events in Darfur

215. Immediately after the completion of the report of the National Commission of Inquiry (see below) in January 2005, and in the years that have followed, the Government of Sudan has embarked on a series of measures with the stated aim of improving the workings of the criminal justice system. It has introduced new judicial and prosecutorial measures, as well as substantive laws, as a reaction to the situation in Darfur. On 7 June 2005, the Chief Justice instituted the Special Criminal Court on the Events in Darfur (SCCED) by decree to, as the name suggests, prosecute crimes committed during the Darfur conflict. The Court's jurisdiction is presented in wide terms to cover the Sudanese Criminal Code, violations as cited in the report of the National Commission of Inquiry, and charges pursuant to any other law, as determined by the Chief Justice. Its jurisdiction was further extended in November 2008 to include crimes under "international humanitarian law."

216. International humanitarian law (IHL) normally refers to the set of legal rules which seek to limit the effects of armed conflict by protecting those who are not, or who no longer are, participating in hostilities. The term is derived from the series of Geneva Conventions and Protocols (1864 onwards, but especially the four Conventions of 1949), as well as the Hague Conventions (1899 and 1907). Collectively, they refer to what is often called the laws and customs of war. Without formal definition within the Sudanese legal system, there will continue to be a certain degree of uncertainty about IHL, which might prove problematic for a source of criminal law. Moreover, depending on what meaning will be attached to IHL, the concept might well exclude certain crimes, including crimes against humanity. This problem has been ameliorated to some extent by the express incorporation, in June 2009, of some international crimes into the Criminal Act of Sudan. However, insofar as IHL remains a possible source of criminal law to be applied by Sudanese courts, further judicial or legislative guidance will be required in order to clarify the content of the substantive law on the basis of which investigations can be undertaken and prosecutions brought before these courts. Perhaps unsurprisingly, charges brought before the Special Court did not in general reflect international crimes.

217. The SCCED initially operated as a roving court. It has dealt with cases in the three capitals of the states of Darfur: El Fasher, Nyala, and El Geneina. As a Darfur-wide court, it would have been expected to have a full docket with cases across the three states. However, during its visits to Darfur, the Panel did not find evidence of the kind of judicial activity, which the situation in Darfur ought to have generated. It was reported to the Panel that only 13 cases had come before the SCCED thus far; that these cases all involved ordinary crimes; and, that the only charges relating to a large-scale attack against civilians – the usual subject matter of war crimes and crimes against humanity – led only to convictions on theft that allegedly

took place after the attack. Whatever the reasons cited for this outcome it was quite clear to all observers that the SCCED has so far accomplished very little. The major violations in Darfur have yet to be the subject of any serious judicial process.

Early Investigative Initiatives

218. Investigations are the cornerstone of criminal justice, and the basis for all other proceedings. One of the first initiatives the Government of Sudan took to quell the growing disquiet about Darfur was the establishment, in May 2004, of a National Commission of Inquiry, by Presidential Decree. That Commission, which consisted of eminent lawyers and retired senior military officers, was mandated to inquire into the allegations of violations of human rights by armed groups in the Darfur states, and to ascertain the reasons that led to the violations. The Commission handed its report to the President of Sudan in January 2005.

219. The National Commission's report has been criticised in some quarters for the failure to reflect the true extent of the crimes in Darfur, especially in the light of subsequent reports on the same events, including the report of the UN Commission of Inquiry appointed by the Security Council. Although the National Commission's report referred to a number of exonerating circumstances, disputed the figures for deaths and rejected the allegation that genocide was being committed, it nevertheless found evidence of war crimes, including extra-judicial killings, as well as rape. Significantly, it recommended further legal processes. Concluding that the violations required further inquiry and investigations, the Commission recommended "the prompt establishment of the proposed committees for the judicial and administrative investigation of the violations mentioned in this report and the taking of legal steps with regard to anyone against whom prima facie evidence exists." Together with the UN Commission's report, the findings of the National Commission provided a clear and detailed basis for the Government of Sudan to undertake further, more forensic investigations to support the fight against impunity with regard to Darfur. It was for others to complete the task of these commissions.

220. Beyond the proposals for further criminal processes, the National Commission took a wider view of the situation in Darfur and sought to deal with the triggers and effects of the conflict. It called for a committee to look into the question of reparations and compensation, and another committee to demarcate and regulate tracks and routes for nomads, and some work was subsequently undertaken on these issues. It is clear from the above that the problem with respect to Darfur has not been a shortage of analysis or ideas on what mechanisms to establish to address the conflict. The faults have lain elsewhere.

Failings in Prosecution and Further Investigative Initiatives

221. Immediately on the heels of the report of the National Commission, the Minister of Justice, in January 2005, appointed a seven-member committee to investigate allegations of violations of human rights by armed groups in Darfur during 2004. Headed by a High Court judge, the committee undertook visits to Darfur between February and April 2005, where it collected testimonies and gathered evidence. Arising from this work, the Minister of Justice announced that the names of some 160 individuals would be handed to the SCCED for trial. Despite this undertaking, no one from the list has been formally charged with relevant offences, and the matter appears to have disappeared from the radar. Nor has the full extent of the committees' findings been disclosed.

222. In another initiative, on 18 September 2005, the Minister of Justice announced that an office of Specialised Prosecutor for Crimes against Humanity would henceforth be based in Khartoum. This is a national office, and is not dedicated to the events in Darfur, although it can open branches in any part of the country. The office is charged with exercising powers provided for in international conventions to which Sudan is a party, and any other relevant law in relation to crimes against humanity and any other crimes stated in any other law which infringes upon, or constitutes a threat, to the security and safety of humanity. This office has never become fully operational; although the office provided some support to state prosecutors, its impact on securing the prosecution of serious crimes in Darfur is yet to be felt. Some activity has, however, been generated by the office of the Special Prosecutor, as discussed below.

The Special Prosecutor for Darfur

223. On 3 August 2008, the Minister of Justice appointed a Special Prosecutor to focus specifically on crimes committed in Darfur since 2003. This was the first effort to formally fuse investigative and prosecutorial functions with respect to Darfur. The incumbent, Mr Nimr Ibrahim Mohamed, is assisted by three Senior Legal Advisors, and by committees of community notables (*lajan hukama*) whose role is to identify witnesses and victims, to supervise conciliation settlements, and to assess damages. The Special Prosecutor is attached to the SCCED, and his committee has apparently commenced work in the three states of Darfur. In February 2009, Mr. Mohamed announced that three men, including Ali Kushyab - who is the subject of an outstanding ICC arrest warrant - had been charged with criminal offences. However, those cases have not yet come before a court and there was little expectation that they will do so any time soon. The Special Prosecutor and his team are confronted with an enormous task. The scope of their work is very wide; they are required to investigate serious and complex crimes committed over a sustained period by a multiplicity of perpetrators across a vast terrain. Mr. Mohamed told the Panel that he and his limited staff must cover over 500,000 square kilometres with limited road access. Without solid political support, their efforts cannot make the impact that the victims of Darfur deserve.

Investigating and Prosecuting Sexual Violence

224. Allegations of widespread rape and sexual violence have repeatedly emerged out of Darfur causing alarm. Responding to these concerns, on 28 July 2004, the Minister of Justice created three Committees Against Rape, one in each state of Darfur. Appointed under the Commissions of Inquiry Act, the Committees were constituted exclusively of women, each chaired by a judge of the Court of Appeal. They were to report on their work within two weeks. In that time, they were not only to carry out inquiries, but to discharge prosecutorial powers, such as the framing of charges and the supervision of the prosecution of cases before the courts. The mandate of the committees focused on the crime of rape, and therefore their work did not extend to consideration of other forms of sexual violence and abuse often encountered during conflicts. Like the National Commission of Inquiry, the Committees Against Rape reported that some incidents of rape had occurred, but they concluded that mass rape had not taken place.

225. Prosecuting rape cases effectively is difficult the world over. It is critically important for the whole criminal justice system to win the confidence of affected communities and in particular the victims themselves. Credible assurances of protection and respect for their dignity are essential if victims are to cooperate with criminal investigations. The measures required to support such investigations could not have been put in place in the brief timeframe assigned for the work of the Committees. Neither is there evidence that since the creation of the Committees, the crime of rape has been accorded the attention it deserves, whether in the SCCED or within the ordinary courts.

226. In addition to the inadequacies in the investigations of rape cases in Darfur, a broader, and perhaps more serious, issue is that currently the law, criminal procedures and rules of evidence in Sudan impose forbidding obstacles in the way of proving allegations of rape. Rules relating to corroboration, the weight attached to the evidence of complainants and the risk that the victims could in the process be charged with adultery, compound the difficulties. All these factors have militated against the effective prosecution of sexual crimes in the SCCED. If Darfur's victims of rape are to see justice, the methods and rules for investigating and proving rape will need to be overhauled and streamlined with the interests of victims in mind.

State-Level Efforts

227. In the years since the conflict in Darfur began, several state-level investigation commissions have also been set up in each of Darfur's three states. Sudan has a federated political system, and several competences, including criminal investigations, which are primarily the responsibility of the police, are devolved to states. The investigative bodies established by the states reported to the Governor, and, in at least one instance, apparently to the State Security Commission. Investigations, particularly where state actors might be

implicated in the commission of offences, need to be independent and to be perceived as such. Like other measures the Panel has considered, the work of the state investigating committees has not translated into systematic prosecutions of the type that the abuses in Darfur demand. It is clear that for justice to be realised, the formal investigative and prosecutorial functions of the state will have to be strengthened significantly, and resourced and co-ordinated adequately, in order to best serve the courts and tribunals that will adjudicate over the crimes of Darfur.

VII. CONCERNS ABOUT SUBSTANTIVE LAWS

Addressing International Crimes in National Law

228. Since 2005, the Government of Sudan has introduced several piecemeal measures to enable its criminal courts to take into account international criminal law. It has employed several devices, including conferring the Special Courts for Darfur with jurisdiction to deal with "international humanitarian law." But as commented upon earlier, this formulation may be too imprecise to withstand legal challenge or translate into viable criminal charges.

229. The Government has now amended the Criminal Act of 1991 to reflect international crimes. The new provisions of the code will broaden the legal basis on which the State can deal with serious crimes, particularly those committed in the context of conflict. The Armed Forces Act of 2007 also provides another legal framework for the prosecution of unlawful acts amounting to genocide, war crimes and crimes against humanity. Although this Act applies principally to members of the armed forces, it is extended to any other person who commits these crimes within Sudan or against Sudanese victims. The Act can therefore apply to armed groups and other security personnel. However, in applying these new laws, the Government will also need to take account of the so-called "principle of legality", which is recognised by the Interim National Constitution, and prevents the retrospective application of criminal law.

The Principle of Legality

230. Article 34 (4) of the 2005 Interim National Constitution of Sudan formulates the principle of legality in the following terms: *"No person shall be charged of any act or omission which did not constitute an offence at the time of its commission."* This article should however, be read with Article 27 (3) which makes international human rights treaties ratified by Sudan a part of the Bill of Rights: *"All rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified by the Republic of the Sudan shall be an integral*

part of this Bill." Amongst those treaties is the International Covenant on Civil and Political Rights (ICCPR), to which Sudan acceded in 1986 (accession has the same effect as ratification). Article 15 (1) of the ICCPR upholds the general principle against retroactive application of criminal law, while Article 15(2) creates, in effect, an exception for international crimes: "*Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by the community of nations.*"

231. The effect of Article 27(3) of the Constitution would therefore be to render Article 15 (2) of the ICCPR an integral part of the Sudanese Constitution. This means that as long as an individual's conduct amounted to a crime recognised under customary international law, he or she could be tried under new legislation incorporating those international offences. In practice, "principles of law recognised by the community of nations" will cover most international crimes.

232. Although the language incorporating human rights treaties is quite explicit in the 2005 Interim National Constitution, that provision only came into force on 9 July 2005. Article 27(3) would not, therefore, apply with respect to crimes committed between 2003 and 2004 – the period acknowledged as the height of violations in Darfur. Regarding conduct prior to July 2005, further legal clarifications will be necessary since the 1998 Constitution, which was the operative legal framework at the time, did not contain a provision incorporating international human rights treaties into Sudanese law. Instead, Article 32 of the 1998 Constitution reiterates the principle of legality by preventing criminal liability and punishment attaching to any person in the absence of prior law criminalising the conduct.

233. These are questions of interpretation and it seems to the Panel that a broader approach to both Constitutions would permit the charging of international crimes in Sudanese courts with respect to conduct manifested in Darfur. This interpretation appears to have been contemplated by the judiciary when the SCCED was given jurisdiction to deal with breaches of "international humanitarian law" committed during the conflict. Although the conferment upon a court of jurisdiction might not have the same status as actually legislating against that conduct, the practice in Sudan thus far signals, at the very least, a willingness to adopt a less restrictive interpretation of the principle of legality. Although views about the issue were expressed to the Panel, there has been no formal legal challenge of the jurisdiction of the SCCED on this ground. To avoid lingering doubts about the legality of any charges that might be brought with respect to events prior to July 2005, this question needs a definitive answer, either by specific and detailed guidance from the Chief Justice, or by enactment of Parliament.

234. However, even if there were found to be insurmountable legal obstacles to retroactive legislation, there are other ways for making certain that the charges brought with respect to Darfur reflect international crimes. This might include, for example, requiring the prosecution to use the criteria of crimes against humanity or war crimes, as the case may be, as the basis for selecting certain individuals to be prosecuted, especially those who might have planned or ordered the crimes. Judges could also in the course of their judgments make findings as to

whether or not the conduct amounted in scale and approach to relevant international crimes. Such an approach should not offend against the principle of retroactivity. The issue of retroactivity should not, therefore, be permitted to hold back justice for Darfur. The Panel considers that the overriding goal is that the violations in Darfur should be thoroughly investigated and appropriate decisions taken about prosecution, punishment and other forms of accountability on the basis of those investigations.

Identifying the Main Perpetrators - Modes of Criminal Liability

235. For effective and credible prosecutions, it is crucial that those who were directly involved in the commission of offences, especially those who instigated the crimes or participated in less overt ways, are identified. In this connection, the Criminal Act of 1991 has provisions which can ensure that planners, and those who oversaw or ordered the crimes in Darfur, can be brought to justice. Section 23 of the Act, penalises those who order minors or persons acting in good faith, to commit offences. It also criminalises the compelling of any person to commit an offence. Those who order or compel the commission of crimes are liable for the penalty for the crime as though they were sole perpetrators. Compelling involves overriding the will of an individual and can encompass relationships between commanders and those carrying out military orders. Section 25 of the Act criminalises the abetment of an offence, defined as: "*...the inducement of one person by another to commit an offence, or the ordering of any mature person under his control to commit it.*" [Section 25(1)]. This is a broad formulation that would encompass the conduct of leaders who, though remaining in the background, might have ordered, instigated or facilitated the crimes in other ways. Although Sudanese law does not yet reflect in precise terms the concepts of "command responsibility", "joint common enterprise" or "indirect perpetration", as has been developed under international criminal law, it seems to the Panel that the existing laws of Sudan are sufficient to support the prosecution of all those who may have ordered or induced the commission of mass crimes in Darfur.

Other Legislative Impediments to Trials: Immunities from Prosecution

236. Regardless of the substantive law applicable, there still remains within Sudan a plethora of legal instruments which impede the prosecution of various officials. Sudanese legislation, including the 2005 Interim National Constitution, provides civil and criminal immunities for a broad range of officials, for acts committed in the course of their duties. To prosecute members of the national legislature for a serious crime, a waiver of immunity by the relevant legislative chamber is required. Under the current Constitution, the President and Vice Presidents of the Republic are generally protected from prosecution, except that Article 122 gives the Constitutional Court criminal jurisdiction over the President of the Republic, in case the incumbent commits high treason, gross violation of the Constitution, or gross

misconduct in relation to State affairs. Article 60 provides for the immunity of the President to be lifted, upon a resolution passed by three quarters of the national legislature. A Sudanese President could therefore be tried while still in office.

237. Of particular concern are the immunities from criminal process that are enjoyed by members of the security forces, and which derive from legislation, as well as the exercise of powers conferred upon the President. The National Security Forces Act (section 33), the Police Act of 1999 (section 46) and the Armed Forces Act of 2007 (section 34) are examples of provisions that prevent the direct application of criminal process against security personnel, requiring formal consent from the particular force before individuals can be subjected to legal processes. Pursuant to Article 58(1) (i) of the 2005 Constitution, the President of the Republic may grant pardons, lift convictions or remit criminal penalties. Arising from the Darfur Peace Agreement, the President of Sudan issued Decree No. 114, exempting from criminal prosecution members of the Armed Movements who signed the DPA as well as other individuals who participated in reconciliation processes within Darfur.

238. In the Abuja talks which culminated in the signing of the DPA, the Mediators and the Parties took the position that it was not necessary to consider the issue of justice in detail in the negotiations and subsequent agreement as crimes in Darfur were already the subject of investigation by the International Criminal Court. The Panel takes a different view: it considers that the issues of accountability, justice and reconciliation, including the role of domestic and international justice, are crucially important and should be an integral part of the solution for Darfur, and thus should be a key issue on the agenda of the political negotiations. The Panel has made recommendations in this Report on the approaches and processes that could be adopted in order to attain justice for Darfur.

VIII. THE INTERNATIONAL CRIMINAL COURT AND DARFUR

239. On 4 March 2009, the International Criminal Court made public an arrest warrant against President Omar Hassan Al-Bashir in a decision that has become the subject of intense debate and concern within Sudan, in Africa and internationally. Although not a State Party to the Rome Statute, Sudan became a focus of ICC interest when, by Resolution 1593 of 31 March 2005, the UN Security Council referred the situation in Darfur, since 1 July 2002, to the Prosecutor of the ICC, pursuant to Article 13 (b) of the Rome Statute. In passing the referral Resolution, the Council was acting on the recommendations of the International Commission of Inquiry on Darfur, appointed by the UN Secretary-General in October 2004, in pursuance of Resolution 1564 (2004) of September 2004. The Commission was chaired by Judge Antonio Cassese. The referral Resolution also called for the strengthening of domestic justice and reconciliation measures within Sudan and also made recommendations relating to reparations for victims of the conflict. Shortly after the referral, the Prosecutor opened his investigations.

Based on the evidence collected by the Prosecutor, the Pre-Trial Chamber, acting under Article 58 of the Rome Statute, issued arrest warrants on 27 April 2007 for Ahmed Mohamed Haroun, who at the time of the alleged crimes was Minister of the Interior and in charge of the "Darfur Desk" and a militia leader called Ali Mohamed Abdel Rahman "Kushayb." On 7 May 2009, the Pre-Trial Chamber issued a summons for Bahr Idriss Abu Garda, a leader of the United Resistance Front, a Darfurian rebel movement. The Prosecutor's applications with respect to charges against two other individuals still await decision or disclosure by the Pre-Trial Chamber.

240. During its visits to Sudan, and in relation to the questions it raised about how to advance justice in Darfur, the Panel found polarised opinions on the ICC. There were those who repudiated the ICC and the Security Council referral, in their entirety, arguing that the ICC process was an intrusive and illegitimate intervention, since Sudan has not ratified the Rome Statute. They argue that the ICC action was intended to undermine the legitimacy of the Government of Sudan, promote regime-change, rekindle internal conflicts and dismantle Sudan. Others, in particular Darfuri IDPs, welcomed the prospect of ICC prosecutions as the only appropriate mechanism for dealing with the situation they have suffered in Darfur, and expressed strong support for the work of the ICC. This issue has also generated and framed popular debate within Africa and internationally on how to deal with the crisis Darfur. The Panel is aware of the arguments presented.

The African Union and the ICC

241. Firstly, the Panel notes that the African Union has been concerned about the violations in Sudan, and has consistently insisted that the question of accountability for crimes in Darfur should be addressed. The AU has also expressed worries about the stability of Sudan and the potential impact external interventions might have on the situation there. It considered, in particular, that the arrest warrant against President Bashir might further destabilise Sudan at a time when potentially epoch-making political events are set to unfold in that country. The AU, which has been involved in peacemaking, peacekeeping and political engagement with Sudan throughout most of its post-independence history, has concerns about the broader political process in Sudan including the implementation of the CPA, the holding of general elections, currently scheduled for April 2010, as well as the Referendum on self-determination for southern Sudan scheduled for January 2011.

242. Against this background, on 21 July 2008, the AU Peace and Security Council of the AU, whilst reiterating its commitment to combating impunity, and condemning "gross violations of human rights in Darfur", requested the UN Security Council, in accordance with Article 16 of the Rome Statute, to "defer the process initiated by the ICC." Under Article 16 of the Rome Statute, the ICC may not commence or proceed with an investigation or prosecution for a renewable period of 12 months if the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, requests the Court to stop or not to commence such

an investigation or prosecution. It should be noted that the AU PSC's request to the Security Council related only to the circumstances of President Bashir. The AU argued that attempts to prosecute the Sudanese President would jeopardise important efforts to settle the conflict in Darfur and might put the search for peace in Darfur at risk, prolong the suffering of the people of Sudan and destabilise the country as well as the region. The AU did not receive a positive response to its request, and the ICC process proceeded up to the issuance of the arrest warrant against President Bashir. In July 2009, relying on Article 98 (1) of the Statute, the AU Heads of State resolved that Member States would not cooperate with the ICC with respect to the arrest warrant issued against President Bashir. Article 98 (1) prevents the ICC from requesting a State to arrest an individual if this would involve the requested State in breaching the diplomatic immunity of a person from a third State, unless the third State waives the immunity of the individual concerned.

243. Although the AU has continually maintained that it does not condone impunity, and that it is acting to safeguard the future of Darfur and stability in Sudan, this has not shielded it from external criticism or some internal dissent because of the stand it has taken. In Darfur and Sudan in general, many are strongly opposed to any suspension of the ICC action, seeing it as an escape route for the Government from the demands of justice.

Focusing on National Justice

244. Because the ICC dominates the discourse on justice and politics in Sudan, and the issue has divided Sudanese and observers alike, this matter needs to be discussed by the people of Sudan themselves as the principal stakeholders in the search for justice. Justice with respect to Darfur cannot be discussed in a vacuum, but must be debated and decisions made within the context of the search for peace and accountability. The matter must therefore feature on the Agenda of the negotiations for resolving the Darfur conflict. There are two elements that will need to be borne in mind during such a discourse. Firstly, that the ICC is a "court of last resort" as well as of limited practical capacity: it can only target a few people for prosecution. Indeed, conscious of its limited resources, the Prosecutor of the ICC has adopted a policy of focusing only on those few who he believes bear the greatest responsibility for the most serious crimes that have been committed in each situation. This prosecutorial policy inevitably leaves the overwhelming majority of individuals outside of the ICC system and still needing to answer for crimes they might have committed.

245. Justice from the ICC, exclusively, would therefore leave impunity for the vast majority of offenders in Darfur, including virtually all direct perpetrators of the offences. It is for this reason that the Rome Statute emphasises the duty of States to exercise domestic jurisdiction over international crimes. In any event, external interventions will not, and cannot, of themselves, provide the answers to the range of difficult questions that Sudan faces. The Panel believes that the people of Darfur and Sudan are well able to address these matters, and to arrive at principled positions. It considers that the proposals it has made in this Report contain

key elements and approaches that will be necessary and helpful for dealing with this matter. In addition, the Security Council remains seized of the matter of the ICC in Darfur, and will no doubt continue to weigh the issues carefully. Although the ICC intervention in Sudan has raised such concern, the Panel does not believe that the motivation, or the rationale, for taking national steps to address justice issues should derive solely, or predominantly, from the perceived need to deal with the ICC issue. Whilst the ICC action might be a catalyst for acts of accountability in Sudan, Darfurians deserve attention not because of the threat of international action, but principally because they have a right to justice, in their own country, on account of what they have suffered.

IX. COLLABORATING FOR JUSTICE: THE CALL FOR A HYBRID COURT

246. During the Panel's consultations it encountered, amongst the victims of the conflict in Darfur, as well as from other Sudanese interlocutors, very strong calls for external involvement within the criminal justice system in any response to crimes in Darfur. As already stated, in the various discussions the Panel had across Darfur and with other stakeholders, including representatives of the Armed Groups, the Panel found a very profound lack of trust in the justice system. Whilst it is not questioning the technical competence or integrity of the Sudanese judiciary or legal personnel, the Panel must nevertheless recognise that the victims of the conflict simply have no faith that the justice system of Sudan will be deployed fairly to address the crimes they have suffered. Their grave concerns, which often manifested in the call for the establishment of a Hybrid Court for Darfur, cannot be ignored.

247. Although there are several variants to choose from, the main distinguishing feature of a hybrid court is that it combines national and international staff, and often involves a fusion of domestic and internationally recognised criminal justice procedures. Hybrids began to be the preferred model after the initial experience with the UN *Ad Hoc* Tribunals for Yugoslavia and Rwanda, international courts that became associated with an expensive and slow pace of justice. It was more cost effective, more efficient and in some cases more acceptable in the domestic or regional context, to have courts operating *in situ*, but strengthened by external actors.

248. Few proponents of a hybrid court in Sudan spelt out in any detail what they hoped the new arrangement would look like, or how the labour would be divided between national and international actors. These are questions of detail, and it seemed to the Panel that the demand for a Hybrid Court was being driven by the deeply felt concern that the Sudanese national justice system would not, or could not, deal adequately with the crimes of Darfur. Sudan's unilateral actions, using existing mechanisms, have not commanded the broad confidence required to secure the cooperation of the people of Darfur, whose faith in Government institutions has been eroded.

249. Outside Darfur, both within and outside Sudan, others saw in a Hybrid Court an example of the kind of credible national mechanism that might tilt the discussion within the Security Council in favour of deferring ICC action under Article 16 of the Rome Statute. Alternatively, adjudication by a hybrid court was viewed as potentially providing the basis on which admissibility decisions might be taken by the ICC, pursuant to the principle of complementarity (see below). Not all those who took these views were supporters of the Government of Sudan or President Bashir; some were simply grappling with the options for avoiding what they saw as a looming impasse within Sudan. They invested in the hope that adopting a Hybrid Court would put to rest the question of justice, definitively. However, the Panel found the legal personnel working within the Government, and supporters of the Government, quite adamant that the current legal system was competent and willing to handle the justice issue in Darfur without the need for external judges. The Panel has taken account of all these views and arguments.

250. Although the Panel did not receive a common definition of a hybrid court, it has considered the workings of other hybrid courts in other jurisdictions where they have been adopted, and makes two main observations. Firstly, hybrid courts, as transnational collaborations, will often involve the adoption of complex legal and institutional mechanisms and require considerable diplomatic and political resources. Whilst the necessary preparations are being put in place, investigations and judicial processes, which could have commenced using the existing capacities within the country, are put on hold. Such hybrids normally entail delays.

251. Secondly, depending on the model adopted, hybrid courts can be expensive; as a result, financial considerations often impose a finite lifespan. Consequently, these courts tend to adopt prosecutorial strategies which focus as much on a completion strategy as on the need to administer justice thoroughly. In practice, a significant number of persons are likely to avoid any criminal processes, just as the ICC can only deal with a fraction of the cases deserving prosecution. Even though the majority of the cases would fall outside the reach of hybrid courts, and would have to be dealt with through other national accountability mechanisms, hybrid courts require a significant investment and often channel money away from other justice institutions within the country and can thus generate an internal disparity in the provision of justice.

Potential Contribution of a Hybrid Court

252. Even in the light of these two apparent drawbacks, the Panel is persuaded that a Hybrid Court for Darfur would serve a critical purpose, as one component of the architecture for confronting Darfur's past. The Panel recognises that confidence in the Sudanese institutions is extremely low, and non-existent in some quarters. At the moment, the conditions simply do not exist to engender the necessary public confidence in any investigations and prosecutions that might be undertaken by the Government relating to crimes arising from the Darfur

conflict. In these circumstances, by acceding to a Hybrid Court the Government of Sudan could potentially allay the prevailing scepticism about its commitment to justice. The people of Sudan should therefore consider adopting a Hybrid Criminal Chamber to be located within the Sudanese justice system, consisting of a combination of Sudanese and international judges, prosecutors, defence lawyers and investigators. It would apply national laws and, as far as possible, be integrated into the Sudanese system. Considering the options of hybrids, this would be simpler to establish, and easier to integrate into the national legal system.

253. The proposal for a Hybrid Court for Crimes in Darfur should therefore not be viewed as an affront to the Sudanese people. Neither should it be seen as an outcome from which political victories should be claimed by any side. Rather, focusing on the needs of Darfur, it should be seen as a necessary innovation in the face of a situation that calls for measures beyond the ordinary. If it takes visible collaboration with others for the national justice institutions to command the confidence of the victims, that, in the Panel's view, should be an overriding justification for adopting a hybrid court.

254. In any event, the Panel's conception is that a Hybrid Court would only comprise one element of a comprehensive strategy to deal with the crimes of Darfur. Ideally, the Hybrid Court should be reserved for those who appear to bear particular responsibility for planning, organising or carrying out the crimes. It cannot be stressed enough that the main justice burden would still be shouldered by the other courts and tribunals established and strengthened within the Sudanese legal system, especially the Special Courts for Darfur. These would be served by harmonised and revamped investigation and prosecutorial functions. The Panel's premise is that justice and reconciliation will best serve broader social functions and leave legacies of change in the justice system of Sudan if the mechanisms are local, accessible and give victims a meaningful role in the proceedings. With respect to the question of cost, the accent should not be on introducing a two-tier justice, with an overly resourced hybrid court, and at the apex of a system that remains under-resourced. Rather, the goal should be to achieve an equitable investment across the criminal justice sector, and especially for the institutions proposed by the Panel for tackling the violations in Darfur. A model that aims for efficiency, without compromising the quality of justice should be adopted.

Relevance of the Principle of Complementarity Under the Rome Statute

The principle of complementarity is a key pillar of the Rome Statute of the ICC and it is set out in the preamble and Article 1 of the Statute. It requires the Court to yield jurisdiction to a State which is able and willing to deal genuinely with the crimes with which the Court is concerned. Complementarity is given effect through the rules of "admissibility" set out in Article 17. Whenever a State is able and willing genuinely to exercise criminal jurisdiction with respect to a crime, then the ICC may not supplant that State's jurisdiction with its own. Under Article 19 (2), therefore, an individual facing ICC charges, or a State wishing to assert its criminal jurisdiction, can challenge the admissibility of the case i.e. the right of the ICC to deal with the case. The party bringing an admissibility challenge must show that the crimes in question are either being, or have already been, genuinely investigated or prosecuted. The Court may also determine the admissibility of a case on its own motion. It is imperative that the national proceedings or decisions should not have been designed to shield individuals from criminal liability.

255. Therefore, should Sudan make genuine efforts to address the crimes in Darfur, the judges of the ICC would be required to evaluate those steps to consider whether they meet the requirements of Article 17. The final determination of this issue, however, is for the judges of the ICC alone. For the Panel, however, what matters, above all else, is that justice must be dispensed for Darfur in a credible, comprehensive, coherent and timely manner. The needs in this regard are immense, and it is equally clear that the entire burden of justice cannot be placed on any single institution or model, be it the ICC, special courts, traditional courts, other tribunals or a hybrid court.

X. OTHER COLLABORATIONS FOR AN INTEGRATED RESPONSE

256. Even as a specific hybrid court is contemplated, other forms of collaboration within the justice sector should continue, and be strengthened. Within Sudan and without any formalised hybrid arrangements, legal institutions at the national and state-level are already benefiting from bilateral and multilateral partnerships between the Government of Sudan and other agencies working within the justice sector across Sudan. The Panel notes, in this regard, the work of UN agencies, including the United Nations Development Programme (UNDP). The UNDP, with the support of other States, has a programme for providing training within the justice sector, including to the judiciary, as well as support for legal aid provision and projects of the Sudanese Bar. The UN Mission in Sudan, as well as UNAMID, each have Rule of Law programmes, which include components of support to the legal system, in particular the judiciary and penitentiary institutions. Rule of Law activities within the various UN agencies should be coordinated for maximum impact and efficiency. Technical support to governments works best when there is mutual agreement on its parameters and value. That consensus needs to be reached within Sudan. Another factor to take into account is how long a particular agency will be operating in Sudan. Agencies with a longer-term presence in Sudan are better suited for interventions which require a longer commitment of partnership. Current examples of co-operation, at the national level as well as the state level, demonstrate the value and viability of collaboration in the justice sector, and will need to be greatly enhanced as part of the strategy for meeting the justice needs of Darfur.

Interventions by Darfur's States

257. Sudan's Constitution provides for a form of governance in which significant powers have been devolved to the state level where responsibility for certain functions of justice, such as policing and investigations, lies. Pursuant to the Criminal Procedure Act, the police are heavily involved in different stages of the criminal justice process, including in presenting cases before the courts. The overall responsibility for overseeing prosecutions, however, is centrally managed under the national Ministry of Justice. The formal judiciary remains a centralised hierarchy, but each state hosts a hierarchy of courts which are administered within the state. State-level competences hold the promise of greater access to justice for Darfurians if the devolved powers are effectively utilised. Intra-state and Darfur-wide coordination on investigations and prosecutions will need to be reinforced and decisions made about where cases should be handled, as some crimes will have been committed across state boundaries. It is important that the three states across Darfur are equally resourced and adopt the same approaches to investigations and prosecutions. Above all, the measures by the states of Darfur will need to be implemented within the overall framework for justice and reconciliation in Darfur. Therefore, in the design of the national response, care should be taken to adopt working practices which will give the states of Darfur a key role regarding the events in Darfur. If effectively implemented, legacies of state-level involvement in tackling the crimes of Darfur will include strengthened and more responsive criminal justice institutions, which would consolidate the rule of law in Darfur well beyond the lifespan of the specific interventions for addressing Darfur's past.

258. In order to make the most use of all the institutions that will be required to make justice and reconciliation a reality in Darfur, and to avoid conflicting demands upon the same person, rational criteria should be adopted for determining the forum in which an individual would be subjected to accountability. Several factors might be relevant, including the nature and venue of the alleged crimes; the community to which the alleged perpetrator and victims belong; the age of the alleged perpetrator and the views of the victims. Particular attention should be given to clarifying the relationship between a Truth, Justice and Reconciliation Commission (see below) and prosecutorial initiatives. When a political settlement of the Darfur conflict is reached, it will also be necessary to adopt an indicative timeframe within which the formal justice responses should be completed. This would help to concentrate planning efforts and resources towards attaining the specific justice and accountability goals for Darfur, especially for the work of any of the adjudicatory bodies, including a hybrid court or specialised courts. Moreover, beyond a finite period of concentrating on addressing the past formally, Darfurians would then be able to return their orientation towards social recovery and long-term reconciliation needs. A realistic completion strategy should enable all the institutions, especially the formal mechanisms, to accomplish their mandate and it should satisfy the demand of the people of Darfur, and the victims of the conflict in particular, that their experiences will be taken seriously.

259. After mass crimes, justice serves diverse goals. It vindicates the experience of victims, and it represents an official acknowledgement of past failures, thereby signalling the solidarity of a nation with the survivors of injustices. It is important therefore that in the design or implementation of mechanisms of accountability and justice with respect to Darfur, the needs of the victims should be given full consideration, and their views taken into account. Justice underlines the renewal of common values, such as the rule of law, upon which a stable society is built. At their best, and especially in situations such as Darfur, justice processes should also adopt procedures that promote reconciliation between individuals and across communities. Acts of reparation and conciliation, when incorporated into proceedings, can serve this purpose. Where justice might end with the conclusion of proceedings, reconciliation, healing and recovery, need to be continuously nurtured, well into the foreseeable future.

XI. ENGAGING WITH RECONCILIATION

260. Reconciliation, the term used to describe the process of helping communities overcome grief, anger, animosity and mistrust, and achieve healing, is seen as the key to renewing and strengthening social relations and the foundation for durable peace. But its meaning is elastic. It does not of itself provide a pattern for the path towards better and improved relations. Security, truth, justice, reparations, the absence of discriminatory practices, acknowledgment, remorse and forgiveness are commonly regarded as essential prerequisites. But the emphasis upon each of these threads can vary immensely, depending upon the context and the speaker. Darfur is no different.

261. Reconciliation in Darfur is clearly a multifaceted and multilayered exercise, with different preferences and approaches. The political initiatives required to tackle negotiations, a rapprochement between Khartoum and the periphery, and between the Government and the Armed Movements, have been the subject of earlier chapters, respectively. This section of the Report examines the meaning of reconciliation within Darfur itself. Reconciliation is felt at the community level. It is therefore essential that decisions which affect the prospects for reconciliation are not detached from the experiences and current needs of the widest range of people in Darfur, but are in fact based on recognition of their views, as set out below.

262. As mentioned earlier, many of the answers to the Panel's questions about reconciliation in Darfur fell in the domain of justice, and echoed the answers regarding the promotion of justice. For this reason, they have been grouped together and are reflected above. There were also, however, other comments specifically directed towards meeting the economic and social needs created by the war, healing the hurt and pain and mending relations between communities, as set forth below.

What Factors Would Help Reconciliation To Take Root?

- Opportunities for dialogue among the people of Darfur, including debates about the root causes of the war;
- Giving consideration to the needs of IDPs and refugees;
- The voluntary return of IDPs and refugees to their communities and homes;
- Access to basic economic necessities, such as food, water and shelter, as well as health and educational facilities, for all;
- Rehabilitation of villages destroyed in the war;
- A willingness to comply with, and implement, agreements on reconciliation;
- Setting up mechanisms to enforce such agreements;
- An end to political interference from the Government in the efforts by Darfurians to reconcile;
- Distribution of wealth and power by the State according to the relative size of population;
- Cooperation between native administrators;
- An impartial media whose reporting is accurate;
- Political neutrality on the part of civil society organisations;
- Practical interventions focused on lasting solutions by civil society groups;
- Sustained and politically neutral campaigns by civil society organisations and the media in spreading a culture of peace;
- Greater involvement of women in reconciliation;
- Respect for the tradition of inter-tribal marriage;
- Reforms that reflect a willingness to learn from the mistakes of the past.

What Should Constitute the Objectives of the Policy and Practice of Reconciliation?

- Sustainable peace;
- Peaceful co-existence, social harmony, mutual confidence, trust and closer relations between communities;
- Tolerance, respect for others and appreciation of diversity;
- An end to radical views and positions encouraging exclusion;
- Overcoming tribal and sectarian divisions;
- Opportunities for all key actors to express their point of view;
- The rule of law;
- Law enforcement mechanisms to protect civilians;
- Adherence to traditional values, and customary laws and practices for arbitrating tribal disputes;
- An independent judiciary which does not discriminate;
- Admission of mistakes by wrongdoers;

- Fair trials and appropriate punishment for perpetrators of crimes;
- Building confidence between the Government and the people;
- Equitable sharing of power and wealth in Sudan as a whole;
- Accelerated economic development of Darfur.

When Should Efforts to Promote Reconciliation Begin?

As the views below illustrate, opinions were divided as to when it was best to launch specific activities and programmes to enhance the prospects for reconciliation.

- Immediately, in order to lay the foundations for peace;
- After the attainment of peace, the establishment of a secure environment which includes peace education and sensitisation programmes.

XII. FOSTERING RECONCILIATION

Security for All

263. Against the backdrop of fear and insecurity, reconciliation is a meaningless proposition. As long as the majority of the IDPs and the refugees in Chad feel too apprehensive to return to their homes voluntarily, reconciliation will remain largely a matter of rhetoric. A formal end to the fighting, with the conclusion of a peace agreement, would obviously go a long way to assuring the refugees and the IDPs. Although the extreme and systematic abuses of 2003/2004 have abated, incidents still occur. Given the multiple sources of insecurity in Darfur, every effort must be made, by both the Government and by UNAMID, to extend protection and to promote a sense of security for all communities. The Panel has already stressed the need, in the interests of both justice and reconciliation, for solid justice structures to deal with post-conflict violations.

Compensation

264. As in many nations with huge economic potential in Africa, the majority of Sudan's people remain poor. Poverty, which traps individuals and families in hopelessness, and which undermines communal and national unity, is in itself a source of social tension. Against this

background, the underdevelopment of Darfur, and the economic destruction and distress brought about by the war, have given rise to very real economic and social problems which affect the majority of Darfurians, whether they are IDPs, pastoralists or urban dwellers. Government forces and allied militia burnt down hundreds of villages and homes; livestock was stolen and property was looted, forcing thousands of people to congregate in IDP camps or to cross the border into Chad, losing the traditional support networks of family and community. As a consequence, a highly contentious issue, which has a direct and tangible impact on local peace and reconciliation efforts, is land. The importance of land in bringing Darfur to where it is today has already been discussed. Refugees and IDPs argue that their homes and land have been taken over by newcomers. The closing down of migratory routes - the economic lifeline of pastoralists - and the loss of their markets, has also had a profound adverse effect. While the immediate priority is meeting the humanitarian needs of the IDPs and of the people living outside the camps - including pastoralists and those living in the areas controlled by the Armed Movements - these larger considerations must also be borne in mind.

265. As the earlier chapters of this Report highlighted, economic factors contributed to the war. They should not be allowed to undermine people's capacity for change and their responsiveness to new political initiatives. Reparations, including collective and individual compensation for the losses and damages which all affected Darfurians have endured, reconstruction of homes and villages and provision of basic services, are an important part of attending to their economic and psychological needs and their social rehabilitation. They must, therefore, in the view of the Panel, form a key element of strategies for reconciliation. Some victims have become physically disabled by their injuries or emotionally damaged by their experiences. The large number of women and girls who were raped, including some who were subjected to gang-rapes, require particular attention and services, and their needs must not be sidelined.

266. In the DPA (paragraphs 199-213), the Government accepted the principle of individual and collective compensation and agreed to both a Compensation Commission and a rapid-disbursement Compensation Fund. These commitments need to be built upon and transformed into a process with full and active participation of the victims and their representatives.

267. In light of Darfur's past, and its complex present, economic and social policies to alleviate the consequences of the war must be drawn up and applied with care and sensitivity to their implications for peace, justice, social harmony and reconciliation within Darfur. The causes and triggers of the war, and the new grievances generated or exacerbated by the conflict, will all need to be taken into account. Different groups, which are hostile to one another and which have experienced economic difficulties in distinct forms, will be competing for limited resources, which could give rise to new and additional tensions, complicating an already fraught and fragile situation.

Healing Through Acknowledgment, Remorse and Truth-Telling

268. Even if security, justice and economic and social betterment could be made realities within a reasonable time-frame, lasting reconciliation cannot take place without a struggle to arrive at a broadly-shared agreement about the origins, course and consequences of the war. At a minimum, Darfurians in particular, and Sudanese in general, should have a forum in which they can reflect upon and debate, in a serious, genuine, open and vigorous manner, the experiences of all communities in Darfur in the hope of promoting an inclusive vision of history. In addition to the role of formal justice, or non-formal traditional justice, in cultivating reconciliation, non-judicial structures that can facilitate truth-telling, accountability and reconciliation must also be explored. From Chile and Argentina, in Latin America, to South Africa, Sierra Leone, Liberia and Morocco, in Africa, countries scarred by large-scale violations or repressive pasts have opted for national commissions to shed light on the past; to put in place preventive measures so the past does not repeat itself; to empower victims to make their voices heard and to let their suffering and pain be acknowledged; and to enable perpetrators of the crimes to publicly admit their deeds, express remorse and ask for forgiveness.

269. It was apparent to the Panel that there is still tremendous denial, on all sides, within Darfur and in Sudan, and unwillingness to concede culpability for the serious abuses which have so profoundly marked the people of Darfur. It is not possible, for either Darfur or Sudan, to make a break with the past without a collective examination of the root causes and background to the war, the conduct of the war itself and its manifest consequences. The Panel therefore believes that an independent Truth, Justice and Reconciliation Commission (TJRC), mandated to probe and scrutinise all aspects of the relevant events between 2003-2009, would make an important contribution to healing the wounds of Darfur and the divisions in Sudan over Darfur. To persuade perpetrators to make full and truthful confessions, or to accept responsibility for their crimes, there must be incentives for them to appear before the TRJC and disclose their actions, in order to disown the past and move forward.

Representative and Trusted Structures for Local Governance and Mediation

270. Reconciliation is a process and participation, within an inclusive and functioning system of democratic governance within Darfur, is part of the solution. But it must be genuine and dynamic. Reconciliation in Darfur was historically mediated by the customs and traditions which governed relations within and between tribes. The *judiya* is the vehicle for settling inter-tribal discord. Tribal elders acting as mediators, known as *ajaweed*, are responsible for the *resolution of disputes. The native administration is the hierarchical* system of local government, consisting of village *sheikhs* and more senior tribal chiefs. At the moment, local government in Darfur is neither representative nor effective. And although tradition remains strong, its methods have not proven sufficiently flexible or resilient to cope with the new,

evolving and complex demands of the conflict in Darfur. Its credibility and efficacy, constrained by a lack of confidence and trust in the people and the institutions, cannot therefore be taken for granted.

271. All over Africa, as elsewhere, modernisation has transformed, and often weakened, traditional structures of governance. When people, who had previously lived side by side, suddenly find themselves at different ends of a sharp and bloody political divide, as Darfurians do, the bonds which had been developed over decades, or generations, can easily unravel. The shock and intimacy of the violence, the legacy of betrayal, the dislocation and disruption, when thousands of residents are forced to flee their homes and villages, drive people further apart. It also makes it difficult for traditional leaders to command influence when they, and their population, are displaced, as was often pointed out to the Panel. This has led, in the IDP camps, to the emergence of new and much more politicised leaders whose vocabulary, goals and activities are geared towards influencing the agenda of the external world towards Darfur. Arranging for the payment of *diya* in the event of death or injury is an important feature of the work of traditional leaders. But the war has made *diya* a financial burden few can afford. In addition, the Panel was told that easy access to modern weapons, and the sheer scale of the war in Darfur, which is new to its people, had complicated the payment of *diya*.

272. In Darfur, the authority and influence of native administrations has been further eroded by their lack of preparedness for the nature, scale or duration of the war. This has been compounded by the Government's success in creating new native administrations without privileges and power, widely regarded as ineffectual instruments of Khartoum. They have also been implicated in mobilising fighters for the Government. However, the fact that this deficit of credibility is openly acknowledged provides an opportunity for the people of Darfur to address and overcome this issue.

A Sense of Belonging

273. As this Report has pointed out on several occasions, Darfurians are united in pointing out that they have always been, and continue to be, under-represented in most national political institutions, as well as in the civil service and in institutions of higher education, and that their region has been neglected economically. For Darfur to emerge as a stable and integrated region of Sudan, at peace with itself and connected to the rest of the country, the Government and all other political players must forge a sense of nationhood that takes precedence over other forms of identity based on place of origin, region, tribe or clan, regardless of personal or group history or social position. But this can only happen if Darfurians feel confident they are being offered an alternative: a representative and inclusive Sudan which they belong to as citizens with equal access to the political process, in which they are playing a part, and economic opportunities and government services, however limited these may be.

274. Material support and moral encouragement of reconciliation activities and structures, whether it is from the Government, UNAMID, civic organisations or international actors, must be provided in the appropriate manner and sequence which genuinely reinforces these efforts for the benefit of Darfur as a whole. It is particularly important that the Government does not turn them into an instrument for co-opting community initiatives or for exerting control.

BY WAY OF A CONCLUSION
THE IMPORTANCE OF SUDAN FOR AFRICA

275. Sudan occupies a pivotal place on the African continent. The Sudanese nation is a microcosm of Africa's peoples with their diverse and multiple identities and is a meeting place for Africans from across the continent, who have converged on Sudan from north, south, east and west, over past centuries. Sudan is a bridge between North Africa and sub-Saharan Africa.

276. Sudan neighbours nine countries, and in recent years its troubles have brought instability to those neighbours. The Darfur war has contributed to conflicts in Chad and the Central African Republic, and has involved other neighbours such as Egypt, Eritrea and Libya in the search for a settlement. Across the Sahelian countries, the way in which Darfur's conflict has been depicted as "Arabs" against "Africans" and nomads against farmers has reverberations for local communal relations and in turn for national politics.

277. As the Sudanese nation faces its historic decisions concerning democratic transformation and whether it remains one country or becomes two, immense African interests are also involved. Reflecting Africa's deep stake in Sudan's future, the CPA was mediated by an African regional economic community, the Inter-Governmental Authority on Development (IGAD). Africa remains deeply interested in the successful completion of the CPA. Should Sudan succeed in overcoming the legacy of its past, it will be a shining example to the rest of the continent and a catalyst for the acceleration of the processes of the entrenchment of democracy and development. Should it fail to do so, any renewed national crisis in Sudan will spell disaster for both the immediate neighbours and Africa as a whole.

278. Addressing the conflict in Darfur was at the top of the agenda of the African Union, on the establishment of the Peace and Security Council (PSC) in 2004. Sudan's crisis in Darfur was one of the first items to be discussed by the PSC, within the general framework of Africa finding its own solutions to its own problems, and with specific reference to Article 4 of the Constitutive Act of the AU, which requires Africa to be concerned about situations of conflict, grave human rights violations and humanitarian crisis within Member States. The AU did not hesitate to address Darfur, and did so before the UN Security Council became seized of the matter. African troops serve in Darfur, and have died there.

279. Africa has no choice but to assume a leadership role with respect to Sudan. In its engagement with Sudan, Africa has both the obligation and the potential to be completely frank, proactive and helpful. The leadership from Africa must involve helping the people of Darfur to make their voices heard, thereby contributing to their own solutions and determining their destiny. Although the Panel encountered fears about the future, it found a strong sense across Sudan that this was an opportunity for change and a critical time for Darfur, for Sudan and for Africa.

PART II

RECOMMENDATIONS TO RESOLVE THE CRISIS IN DARFUR

I. INTRODUCTION

280. Because it was concerned to solve the Darfur conflict, the African Union (AU) Peace and Security Council decided to establish the High-Level Panel on Darfur to examine the situation in Darfur and to submit recommendations on how best to accelerate the advance towards peace, reconciliation and justice in Darfur. The Panel began its work in March 2009. Over a period of six months, two of these being additional to the original mandated period, it undertook four missions to Sudan where it spent forty days, and held wide consultations, meeting with a range of Sudanese stakeholders in Darfur, Khartoum and Juba. The Panel also visited the countries of the region, meeting with the leaders of neighbouring States as well as with representatives of the Armed Movements and the international community. The Panel was asked:

> *"To examine the situation in depth and submit recommendations to Council on how best the issues of accountability and combating impunity, on the one hand, and reconciliation and healing, on the other, could be effectively and comprehensively addressed, including through the establishment of truth and/or reconciliation Commissions, with the active involvement of the AU and its relevant institutions and, as necessary, the support of the larger international community."*

281. As already discussed in this Report, the Panel believes that the roots of Darfur's crisis lie in the neglect of the Sudanese peripheries by the centre of power and wealth in Khartoum, a legacy that predates independence and has continued to date. Characterised by the inequitable distribution of wealth and power, this imbalance has fomented tensions and conflicts in Sudan and given rise to the situation that the Panel has been called upon to investigate. The Panel believes that all the various overlapping layers of conflict must be addressed, but above all that the fundamental problem of Sudan must be confronted if lasting peace for Darfur is to be realised. The Panel defines the fundamental problem of Sudan as "The Crisis of Sudan as manifested in Darfur."

282. This section of the Report contains Recommendations to the mandating authority, the African Union. They are intended to suggest the range of interventions that will be required for the people of Sudan, with the constructive support of others, to deal with the causes and effects of the complex events that have unfolded in Darfur.

283. The Recommendations cover, amongst other issues, the process for reaching a Global Political Agreement (GPA); the important issues of justice and reconciliation; the promotion of dialogue among Darfurians; mobilising Sudan's neighbours; the Sudan General Elections and the Southern Sudan Referendum; measures for the implementation of the agreements; support for the AU-UN mediation process; and the role of UNAMID and the African Union in promoting and consolidating peace in Darfur.

II. BROAD OBSERVATIONS

284. The Panel was greatly encouraged by the fact that all the Sudanese stakeholders it consulted expressed with candour their commitment to peace and reconciliation. The Panel is therefore convinced that with the necessary support, the people of Sudan will be able to bring the conflict in Darfur to an end in an inclusive, peaceful and expeditious manner. The Panel observed how the people of Darfur, at the grassroots, have taken numerous initiatives to try to settle their differences, to achieve local peace and reconciliation, and to put in place the building blocks for a political settlement at a higher level. It also strongly sensed the impatience and frustration of the Darfurian people with the slow pace at which the leaders, on all sides, are approaching the urgent task of concluding a comprehensive and durable political settlement.

285. While there are differences about which should come first between justice and peace, every stakeholder equally expressed his or her expectation and determination to see that justice is done and impunity eradicated.

286. Stakeholders hold the firm view that the conflict in Darfur is political in nature. As a consequence, they believe that a political agreement is required to solve the conflict, and therefore that a military solution is neither possible nor desirable.

287. In addition, and of great significance to the process of negotiations, these stakeholders agree on a number of important issues, including:

a) The urgency to pursue peace through negotiations, rather than force/military struggle;

b) The requirement for an inclusive process of negotiations involving the Government of Sudan, the Armed Movements, the IDPs and refugees, political parties, civil society organisations including women, the native administration, nomads, the neighbours of Sudan and the rest of the international community;

c) The necessity for the Government of Sudan to genuinely acknowledge the suffering that the people of Darfur have endured over the past six years;

d) The need for the Armed Movements, at a minimum, to agree on a common negotiating position, repudiating personal agendas and attachment to partisan, tribal and clan affiliations, and engage in negotiations;

e) The importance of agreeing on an Agenda for the negotiations;

f) Retaining Darfur as an integral part of Sudan;

g) Enabling Darfur to enjoy an equitable share in the distribution of power and wealth in Sudan and the importance of having its developmental needs met;

h) The possibilities of promoting peace, justice and reconciliation through traditional processes at the local level, provided that the process is not manipulated for narrow political ends, is left to the Darfurians, and involves neutral, non-partisan native administration leaders;

i) The imperative to respond immediately, and without waiting for the conclusion of the GPA, to the various demands of peace, justice and reconciliation at all levels within Darfur, and between Darfur and the central Government;

j) The need to promote the GPA amongst the people of Darfur generally.

288. The Panel conducted its work against a background of many existing Agreements towards a political solution in the Sudan. To date, there have been various agreements relating directly to Darfur or having some bearing on the possible solution of the conflict in Darfur. These include the Humanitarian Ceasefire Agreement of April 2004 (N'djamena); the Declaration of Principles for the Resolution of the Conflict in Darfur (DoP) of July 2005 (Abuja); the Darfur Peace Agreement (DPA) of May 2006 (Abuja); the Eastern Sudan Peace Agreement (ESPA) of October 2006 (Asmara); as well as the overarching Comprehensive Peace Agreement (CPA) of January 2005 (Naivasha and Nairobi).

289. In this context, the Panel believes that the Sudanese political players have, over the years, established a framework within which to pursue the objectives of peace, reconciliation, justice and accountability in Darfur. If criticism is levelled at these earlier attempts, it would be, among others, that there has been inadequate implementation of the relevant Accords.

290. The current grave situation in Darfur is a manifestation of the broader political challenges facing Sudan as a whole. Indeed, many of the Sudanese interlocutors spoke of "the Sudan crisis in Darfur," arguing against the formulation "the Darfur crisis in Sudan." For this reason, the Panel is of the view that any attempt to bring lasting solution for Darfur and Sudan as a whole must be sensitive to this reality. In addition, an inclusive and participatory peace process for Darfur will in turn contribute to the process of democratic transformation in Sudan.

291. The Darfur conflict has regional and international dimensions to which due attention must be paid. These involve some of Sudan's immediate neighbours, in particular Chad, and those further afield. All parties should equally pay serious attention to these dimensions of the conflict, especially through promoting the implementation of agreements Sudan has signed with its neighbours and by continuing to work towards the normalisation and harmonisation of Sudan's relations with all other countries. There is need for the international community, broadly defined, to re-examine its understanding of the causes, the nature and the consequences of the conflict in Darfur and Sudan, and to identify correctly the appropriate solutions, for meeting the country's urgent need for peace, reconciliation and development.

292. Africa has an enormous stake in seeing to the restoration of peace in Darfur. Although Sudan's neighbours are particularly vulnerable to instability within Africa's largest country, the entire continent is affected by the difficulties Sudan is experiencing. Consequently, Africa cannot stay away from Darfur, and the African Union must therefore continue to play an active part in the search for answers for and with Sudan. However, the process of improving understanding of the situation in Darfur and Sudan must accept the Sudanese people as the primary players in the determination of the future of their country, with all the others serving as supporters of Sudanese initiatives.

III. APPROACHING PEACE, JUSTICE AND RECONCILIATION

293. It is self-evident that the objectives of peace, justice and reconciliation in Darfur are interconnected, mutually interdependent and equally desirable. However, it is also equally self-evident that the most urgent desire of the people of Darfur is to live in peace and security. This is a universal Sudanese demand, particularly underlined by the Internally Displaced Persons.

294. Nevertheless, all Sudanese stakeholders also stressed the need for concerted action to deliver justice, which they argued would itself consolidate the pursuit of peace. Given the nature of the conflict in Darfur, and especially the extreme violence and widespread violations of human rights the people of Darfur have experienced, their approach is appropriate and commendable.

295. This means that even as the peace negotiations are taking place, action should be undertaken to investigate the serious crimes that have been committed in Darfur, and to put in place measures to prevent the commission of fresh crimes. Such measures could give priority to preserving evidence for later proceedings, and should include robust arrangements to protect witnesses and to encourage victims of sexual crimes in particular to come forward.

296. It is essential therefore, that the question of national and international justice, as well as reconciliation, should form part of the Agenda of the negotiations for the Global Political Agreement. Those negotiations should give careful consideration to how the Sudanese people should deal with the past and secure sustainable justice for the future and, in that process, should take into account the principles and specific recommendations on justice and reconciliation set out in these Recommendations.

A. ROAD-MAP TO A GLOBAL POLITICAL AGREEMENT

297. The Panel suggests a Road Map designed to provide immediate security for the populace while the talks commence, and equally importantly, to create an enabling environment in which the people of Darfur can participate fully in the process of determining the agenda and outcome of the dialogue about their future. The Road Map should therefore consist of the following steps:

a) The Government of Sudan and the Armed Movements should negotiate and agree to a Suspension of Hostilities Agreement/Truce, to be supported by unilateral measures undertaken in good faith and aimed at reducing violence in Darfur while the process of negotiations are underway;

b) Adoption of a Framework Agreement involving the Government of Sudan, the Armed Movements, political parties, civil society organisations, IDPs and refugees, the native administration, and the nomads of Darfur (collectively, "the Sudanese Parties");

c) Negotiation of a Permanent Ceasefire, including an Agreement on Comprehensive Security Arrangements by the Government of Sudan and the Armed Movements, which takes into account all the sources of violence and insecurity in Darfur;

d) Negotiation of a Global Political Agreement by the Government of Sudan, the Armed Movements, political parties, civil society organisations, IDPs and refugees, the native administration and the nomads of Darfur;

e) The negotiations for a suspension under (a) need not delay the subsequent steps, especially the adoption of a Framework Agreement. Moreover, the negotiations under (c) and (d) can take place simultaneously;

f) The Joint Chief Mediator should give urgency to consulting with the stakeholders, in preparation for the comprehensive negotiations, and in that regard, should take into account the findings of the Panel. This should include consideration and resolution of the important issue of how the various constituencies would participate and be represented in the negotiations.

The Suspension of Hostilities Agreement

298. The Government of Sudan, the Armed Movements, and other armed groups and militia, individually or collectively, shall agree to and negotiate a Suspension of Hostilities (SH) to create an environment conducive to the dialogue to conclude a Framework Agreement (FA) and a Global Political Agreement (GPA). The principal goal of the Suspension of Hostilities Agreement will be the immediate suspension of all armed action and related activities.

299. As articulated in previous agreements, the Parties would do everything within their power to ensure that:

a) Violence is reduced;

b) Civilians are protected and not subjected to violence, intimidation, threats or forced displacement, and that the protection of women and children is given the highest priority;

c) Humanitarian assistance is provided safely to IDPs and other civilians in need;

d) An environment that would enable IDPs and refugees to return voluntarily and safely to their places of origin is created;

e) The Parties co-operate with UNAMID and its verification bodies in monitoring the suspension of hostilities.

f) The Parties which agree to a Suspension of Hostilities will:

    i. Retain their weapons and armed units;

    ii. Continue to hold the positions they occupied at the beginning of the negotiations;

    iii. Take no-action to change the military facts on the ground, such as re-arming, recruiting or repositioning military units;

    iv. Avoid hostile propaganda;

v. Submit to unconditional verification by UNAMID.

300. Simultaneously with the processes of negotiating a suspension of hostilities with the armed groups, the Government of Sudan should take unilateral steps to reduce violence in Darfur. These steps would include: the consolidation of command and control over the security organs operational in Darfur; the strengthening of the Sudan Police Force; the accelerated establishment of community police services for IDPs and people returning to villages and cooperation with UNAMID monitoring activities.

301. Alongside the above, UNAMID should extend non-military logistical assistance to the relevant Armed Movements and provide training and capacity building in ceasefire and related operations to the commanders of Armed Movements. This assistance and training would be extended to all groups that agree to suspend hostilities.

302. Once the Joint Chief Mediator has issued invitations to all the relevant constituencies to participate in the process of negotiations indicated above, the African Union should approach the United Nations Security Council to declare as terrorist organisations such Darfur armed groups as would refuse to participate in the negotiations.

The Framework Agreement

303. The Sudanese Parties should adopt a Framework Agreement which will commit the Parties to a process of negotiations to end the conflict in Darfur. Unless amended by the Parties, the "Declaration of Principles (DoP) for the resolution of the Sudanese Conflict in Darfur" as adopted by the Parties in Abuja, Nigeria, on 5 July 2005, should serve as the Framework Agreement. Such amendment may serve to clarify the Agenda of the negotiations to conclude a Global Political Agreement and establish the modalities for the conduct of the negotiations. Accordingly, the GPA would be negotiated on the basis of the Framework Agreement.

304. The Parties that would negotiate and adopt the Framework Agreement are:

(a) The Government of Sudan;

(b) The Armed Movements;

(c) Political parties;

(d) IDPs and refugees;

(e) Traditional leaders/native administration;

(f) Civil society organisations;

(g) The nomads of Darfur.

305. The Mediator should establish a Reference Group composed of the AU, IGAD, the League of Arab States (LAS) and the UN which will observe the negotiation process towards the adoption of the GPA.

306. All delegations of the Parties should have sufficient representation amounting to at least 30% of women, given the disproportionate burden women have carried as a result of the conflict.

307. The AU-UN Mediator, in consultation with the Parties, specified in paragraph (25) above, should determine the venue and duration of the negotiations.

Permanent Ceasefire and Security Arrangements

308. Immediately after the adoption of the Framework Agreement, the Parties above should enter into negotiations to conclude a Permanent Ceasefire (PC), including Comprehensive Security Arrangements (CSA). The central objective of the PC/CSA will be permanently to end all hostilities among all the armed belligerents, including not only the forces of the Government of Sudan and the Armed Movements, but also tribal militia, and foreign armed elements, ensuring that only the constitutional forces of the State of Sudan have the authority to bear arms, as would be provided for by law.

309. The Permanent Ceasefire would come into force once it has been incorporated into the Global Political Agreement and supersede the Suspension of Hostilities Agreement/Truce which would have remained in force throughout the period of negotiations.

Consulting Darfurians during Negotiations

310. The people of Darfur recall the consequences of their exclusion from the negotiations of the Darfur Peace Agreement signed in Abuja, and are determined not to allow a repetition of that experience. Recognising this reality, it will be necessary to afford the people of Darfur an opportunity to make representations to the negotiating Parties on the Agenda items for discussion at the talks. This will enable Darfurians as a whole to take ownership of the outcome of the negotiations about their future.

311. For this reason, parallel to the Negotiating Forums that will negotiate the Framework and Global Political Agreements, there should be established a Darfur Consultative Convention (DCC), through which the views of the people of Darfur can be obtained. The DCC would convene to receive reports from the formal Negotiating Forums, and feed its views into these Forums.

312. The establishment of the DCC, and its effective functioning, should be facilitated by the DDDC, including providing resources and expertise, in consultation with the relevant components of UNAMID and the Joint Chief Mediator.

313. Notwithstanding the importance of the DCC process, it is important that the Government of Sudan, the Armed Movements and all political players make additional efforts to promote a sense of national belonging, as one of the fundamental and necessary initiatives for the resolution of the Darfur conflict.

314. The Panel considers the need for the involvement of the Darfurian population in the peace talks to be self-evident; it will ensure that the priorities and aspirations of the people of Darfur and, as far as possible, the wider Sudanese constituency, is brought to bear on the negotiations. Whilst military matters are predominantly for the belligerents, non-belligerents have a contribution to make on all the other issues.

315. It will be for the Mediator, in consultation with representatives of the Parties, to work out the exact modalities for the selection and participation of representatives of non-belligerent parties. The DDDC, which has acquired experience in convening representatives of civil society and other stakeholders within Darfur, can play a key role in this process, working with UNAMID to support the negotiation process.

The Global Political Agreement

316. The Sudanese Parties should enter into negotiations to conclude a Global Political Agreement, which would address all the Agenda items identified in the Framework Agreement and incorporate the Permanent Ceasefire and Comprehensive Security Arrangements. (Below we make various proposals relating to the work of the Joint Chief Mediator.)

B. ADDRESSING THE ISSUE OF JUSTICE AND IMPUNITY

317. The people of Darfur understand "justice" broadly to encompass processes of achieving equality, obtaining compensation and restitution, establishing the rule of law, as well as criminal justice. They will therefore expect a package of interventions which deal with all these aspects of justice, and which do not prefer any one measure above the other.

Road-Map for Justice and Reconciliation

318. Delivering justice, promoting reconciliation and encouraging recovery and healing for the suffering the people of Darfur have endured requires a comprehensive, integrated, systematic and innovative approach which is anchored within the legal system of the Republic of Sudan, drawing from the diversity of the country's legal heritage, its constitutional values and commitments under international law. It will also require a strengthening of the existing system with new mechanisms, including a special criminal chamber which shall be a hybrid court drawing on the expertise of qualified and appropriate judges from outside Sudan.

319. As already pointed out, it is neither possible nor desirable to build a barrier between the objectives of justice on the one hand, and reconciliation on the other. By linking Justice and Reconciliation, the Panel is making suggestions to enhance the prospects of reconciliation in order to complement initiatives on justice, and not as a substitute for robust legal measures capable of responding to the urgent and complex legal needs in Darfur. Reconciliation itself is not feasible without the political will to create an enabling environment of peace, security and economic recovery, once again highlighting the profound inter-linkages between peace, justice, development and reconciliation.

An Integrated Justice and Reconciliation Response

320. The Panel considers that an integrated Justice and Reconciliation Response to Darfur (JRRD) is urgently required to deal with the conflict in Darfur. It should encompass a broad range of interventions reflecting the diverse justice and reconciliation needs, as well as the requirement to adopt effective and co-ordinated processes and institutions. The measures would include:

a) Comprehensive, independent and integrated national criminal justice processes, which shall include investigations and re-invigoration of all aspects of the Special Criminal Court on the Events in Darfur (SSCED) as the principal forum for delivering criminal justice for crimes relating to the conflict in Darfur;

b) A Hybrid Criminal Court which shall exercise original and appellate jurisdiction over individuals who appear to bear particular responsibility for the gravest crimes committed during the conflict in Darfur, and to be constituted by judges of Sudanese and other nationalities;

c) Reconciliation and truth telling mechanisms;

d) Compensation programmes and other forms of reparation for losses incurred during the conflict, giving victims a fresh start;

e) Measures for ensuring the safety and dignity of witnesses and participants in the processes of the JRRD, in particular victims of rape and sexual violence;

f) Provision for effective co-ordination between the different institutions and mechanisms envisaged by the JRRD, especially so as to avoid conflicts of jurisdiction;

g) Other measures for strengthening the justice sector in Darfur to deal with post-conflict violations;

h) Promotion and dissemination of information concerning all aspects of the JRRD through outreach programmes, especially within Darfur;

i) An effective national mechanism for overall supervision of the implementation of the JRRD, ensuring integration of the system nationally and within the states of Darfur.

Criminal Justice Processes

321. Criminal justice will be a significant, though not sufficient, pillar in the justice and reconciliation framework for Darfur. Currently, the criminal justice response to Darfur is ineffective and confusing and has also failed to obtain the confidence of the people of Darfur. It will therefore require changes to be introduced within the Sudanese legal system to provide effective accountability for the different levels of criminal participation. Alongside the formal system of national and hybrid courts, traditional justice mechanisms should be applied to deal with appropriate crimes and perpetrators at the community level.

A Hybrid Court

322. In order to facilitate the establishment of a Hybrid Court, the Government of Sudan should take immediate steps to introduce legislation to allow legally qualified non-nationals to serve on the judiciary of Sudan (c.f. section 23, National Judiciary Act, 1986). In this connection, the Panel notes that the Constitution of Sudan does not expressly prohibit non-Sudanese nationals from being appointed to the judiciary of Sudan, and would not therefore need to be amended.

323. The proposed Hybrid Court would consist of a Hybrid Criminal Chamber, which should be composed of panels of highly qualified and suitable individuals of Sudanese and other nationalities. The formula for nominating non-Sudanese nationals, and for constituting the judicial panels of the Hybrid Court, as well as for the deployment of prosecutorial and investigations support, would be proposed by the AU.

324. The Hybrid Court should be supported by dedicated prosecution, investigation and registry functions. Qualified Sudanese individuals would be joined by a staff, comparable in seniority and role, to be nominated by the AU, to serve in key functions of the Court. As indicated below, in making such nominations, the AU would consult widely to obtain recommendations for nominees. The Hybrid Court should operate within the national criminal justice system of Sudan and the JRRD in particular: its functions would be additional and linked to the system of special courts discussed in this Report.

325. To support the work of the Special Courts across the three states of Darfur, the Government of Sudan should establish a body for overseeing and coordinating comprehensive investigations relating to the entire conflict in Darfur. This function will be necessary to avoid duplication of investigations and to provide a structure within which decisions about the processes or proceedings an individual may be subjected to can be undertaken, and to ensure harmonisation of working practices.

326. The investigations should reflect the full pattern of crimes and abuses committed during the conflict in Darfur, and should pay due attention to sexual crimes.

327. The AU should delegate to the investigations body qualified persons to work alongside Sudanese to provide the necessary range of skills for investigating and prosecuting international crimes, and particularly for sexual crimes.

328. The AU should, in consultation with the Government of Sudan, delegate jurists or judges to sit on the Special Courts, either as observers or members of the bench, as the case may be. The AU should be responsible for initiating and overseeing this process.

329. The specific functions of the observers and staff to be delegated to support the Special Courts should be determined through the consultation between the AU and the Government of Sudan. The observers and staff should be required to submit regular reports to the AU and the Government of Sudan.

The Role of the AU in Nominating Judges and Legal Personnel

330. It would be the responsibility of the AU to initiate and establish the system for engaging the Government of Sudan on the formula and process for constituting the mixed judicial Panels and nominating legal officers for the Hybrid Court, and for delegating any observers or personnel for the SSCED.

331. The AU criteria for the identification of individuals for appointment should include: proven professional competence in criminal law and procedure, and experience in the function (judicial, prosecutorial, investigative, or administrative) for which the appointment is made,

capacity to adapt to the legal system of Sudan, and a fair gender balance. Candidates for nomination should not be restricted to African individuals.

332. In the selection of candidates for judges, observers or senior personnel, the AU should seek the advice of internationally respected judges or jurists or international organisations, and should publish its consultation process.

333. The AU should set up a mechanism, in consultation with the Government of Sudan, to oversee the process of the deployment of non-national staff and for receiving reports on the working of the hybrid arrangements generally.

Utilising Sudanese Legal Expertise

334. To address the current needs, the Government of Sudan should mobilise all available human resources. In this connection, the Panel noted that many experienced and qualified Sudanese judges were previously prematurely retired by the current Government. Some have remained within Sudan in private legal practice or other capacities and others have pursued judicial and other legal careers outside Sudan.

335. The Panel believes that it would be prudent, and would also serve as a gesture of reconciliation, if some of these professionals were reinstated to judicial office, or their expertise were otherwise utilised in the implementation of the justice and reconciliation measures that are to be adopted. The Panel would therefore strongly recommend to the Government of Sudan that willing former judges and other competent legal professionals should be invited to handle cases within the JRRD.

Measures to Advance Criminal Justice

336. For the delivery of criminal justice for crimes in Darfur, the Government should take steps to provide:

a) An adequate body of substantive law, consistent with the Constitution, and which reflects international crimes;

b) For the removal of legal and *de facto* immunities and other legal impediments to prosecutions, such as periods of limitation;

c) An independent and credible investigations component;

d) Guarantees of all fair trial rights, including adequate legal representation and, where necessary, legal aid for suspects and accused persons;

e) Enhanced procedural and evidential provisions to enable the effective and timely delivery of justice, as well as the participation of witnesses and victims in judicial processes;

f) Special measures, including legislation, for dealing with rape and other sexual crimes at all stages of the criminal justice pr

g) Measures to protect witnesses and victims participating in proceedings;

h) The appointment of a sufficient number of qualified and experienced personnel to undertake judicial and investigative functions, and the provision of training and capacity building for justice personnel;

i) Procedures and rules for co-ordination between the different courts and functions within the criminal justice system, as well as between institutions of the criminal justice system and the other institutions and mechanisms envisaged by the JRRD;

j) Adequate resources for delivering timely and meaningful justice.

Traditional Justice Mechanisms

337. Alongside the formal prosecutions, the JRRD requires the identification and recognition of the most appropriate traditional mechanisms of justice to deal with those perpetrators who appear to bear responsibility for crimes other than the most serious violations. Particular measures and strategies, and where necessary, legislation, should be adopted to ensure that traditional justice measures operate fairly and do not exclude the concerns of any group wishing to participate in justice proceedings. The communities of Darfur should be consulted on the measures to be adopted.

Common Principles of Adjudication

338. The following principles should apply in the formal courts, traditional courts and the proceedings of the TJRC:

a) All adjudication and exercise of judicial powers with respect to the violations relating to the conflict in Darfur, and in accordance with the JRRD, should be exercised independently and should not be subject to the control or influence of third parties;

b) In the conduct of proceedings, the effective participation of all classes of victims should be promoted, consistently with principles of fair trials and due process;

c) Measures should be taken to protect witnesses and victims during all proceedings and to secure their dignity. Particular attention should be paid to the needs of victims of sexual crimes;

d) Procedures, substantive laws and proceedings should promote acts of reconciliation, restitution and other reparations by convicted persons.

The International Criminal Court

339. The International Criminal Court is a court of last resort, which complements the national judicial systems. It is also a court of limited capacity. This means that even when deploying its full resources, it can only deal with a few individuals out of any situation of which it is seized. It follows that where widespread crimes have been committed, the overwhelming majority of potential criminal cases must be dealt with by the national system. This is simply a reflection of the functional limitations of the ICC. It is important that all stakeholders should realise this, and therefore focus on the vital importance of strengthening national legal systems. The principle of complementarity under the Rome Statute in any event gives precedence to national systems, even when a situation has been referred by the Security Council. This means that the ICC is obliged to take into consideration the fact that a State has taken or is taking effective justice measures to deal with relevant crimes. Any credible measures adopted in a national system would also be of interest to the Security Council in reaching any decisions with respect to the situation in Darfur and the Sudan more generally. The role of international justice more generally should be on the agenda of the Global Political Agreement.

C. ADDRESSING THE ISSUE OF RECONCILIATION

340. Reconciliation can assume various expressions and must be realised within the communities of Darfur, in accordance with their values and using the institutions in which they have trust. The need for reconciliation with respect to Darfur arises from the scale of the harm and injustice that has been suffered by Darfurians during the conflict, and more broadly from historical injustices. Reconciliation, as a process of confronting and overcoming enormous personal and communal losses, grief, pain, bitterness and anger, in order to rebuild trust among communities and peoples, requires more than just a single mechanism. It reflects a change of attitude which includes a willingness to confront and learn from the past.

341. Reconciliation will be promoted by the extent to which justice is seen to be done, and by the willingness, individually and collectively, to acknowledge responsibility for past violations and mistakes, to express remorse and to make reparations. At the political level, demonstrating good faith in the negotiations, and in the implementation of the Global Political Agreement, will contribute to reconciliation, as shall serious steps taken by the Government of Sudan to reverse the marginalisation of, and destruction in, Darfur.

342. Within Darfur, there are particular and destabilising grievances relating to inequitable allocation of land, or access to land resources, by certain communities. Lasting solutions will need to be found to secure access to land resources for all the population groups of Darfur. The problems associated with land need to be considered further during the negotiations.

343. Reconciliation must also find expression within formal justice institutions. Thus individual acts of reconciliation, relating to a wrong that also amounts to a crime, ought to be taken into account or promoted within the criminal justice proceedings. This requires that the necessary procedural linkages should be established between the institutions of justice and any mechanisms of reconciliation.

Truth, Justice and Reconciliation

344. The Panel considers that a Truth, Justice and Reconciliation Commission (TJRC) would constitute an essential component of the strategy for promoting reconciliation with respect to Darfur. A TJRC should therefore be considered and endorsed by the Global Political Agreement and the people of Sudan generally. The TJRC should be established by legislation, to enable the investigation and the establishment of as complete a picture as possible of the nature, causes, consequences and extent of gross violations of human rights committed during the period of the conflict in Darfur from 2002 to 2009.

345. The TJRC should:

a) Be independent and composed of persons of high standing and moral integrity agreed to by the Parties to the GPA, and who should include Darfurians as well as jurists and women;

b) Provide an opportunity for all Darfurians, in particular, and the Sudanese in general, to make representations on all matters relating to the conflict in Darfur;

c) Afford victims an opportunity to relate the violations they suffered;

d) Allow those who might have committed serious crimes to admit their personal involvement in the commission of these crimes, apologise to victims, express remorse and seek pardon or otherwise cooperate with the work of the Commission;

e) Have the power to grant pardons to individuals, on application, and on specified conditions;

f) Have the power and capacity to order or extend individual and collective compensation or other reparation to the victims, taking into account other compensation and reparation mechanisms;

g) Make recommendations aimed at preventing a return to conflict and the commission of gross violations of human rights in future;

h) Make any necessary recommendations for promoting national reconciliation with regard to Darfur;

i) Report its findings and recommendations to the nation;

j) Structure itself and adopt appropriate methods of work in order to fulfil its functions effectively.

Delivering Social And Economic Justice

Measures to Aid the Return of Displaced Communities

346. The end of the conflict will enable the displaced population, including refugees, to exercise their right to return to their original homes and locations of residence. As they return, many are likely to encounter difficulties. All affected Darfurians are entitled to restitution of properties that have been expropriated, to compensation for loss or blighting of property, as well as to other forms of reparation for harm suffered as a result of the conflict.

347. In this regard, the Government of Sudan, assisted by UNAMID, should take steps to relocate people who have illegally occupied villages and land evacuated by IDPs and refugees to enable the rightful owners to re-occupy their land. The Government should consider establishing a Standing Body, including representatives of IDPs and repatriated refugees, to investigate land ownership and occupation. More generally, the Commission should examine the question of land alienation and resettlement, and identify mechanisms which will allow disputes arising from land to be settled in a satisfactory manner.

348. Working together with UNAMID, the Government of Sudan should engage the IDPs and refugees to facilitate their voluntary return to their homes. This requires provision of adequate protection and the necessary conditions of safety and security, as well as the provision and rehabilitation of services and amenities in the areas of return.

Humanitarian Assistance for the Interim Period

349. Whilst the negotiations for ending the conflict are ongoing, and the actions required under the JRRD are being undertaken, the Government of Sudan, cooperating with UNAMID, the AU, UN and other humanitarian actors, should take urgent steps to:

a) Meet the humanitarian needs of Darfurians living within the camps;

b) Improve security inside and in the vicinity of these camps;

c) Meet the humanitarian needs of persons who live outside the IDP camps, including pastoralists;

d) Meet the humanitarian needs of communities who live in areas controlled by the Armed Movements;

e) Create the conditions for the voluntary and secure return to their localities of IDPs and refugees;

f) Provide alternative options for residence, livelihoods and services for those IDPs who prefer to remain in or close to urban centres;

g) In support of the above, the Darfur Joint Assessment Mission (D-JAM) should now revive its activities to assist the transition from humanitarian intervention to recovery and development.

Compensation

350. In the negotiations, the Parties should adopt principles and mechanisms for ensuring adequate, accessible and equitable compensation (individual and collective), restitution and other forms of reparation for the various types of individual and collective harm suffered by Darfurians during the conflict.

351. The Government and the international community should commit themselves to resourcing adequately the process of return and resettlement of displaced persons and refugees and for the provision of restitution, compensation, reparations and rehabilitation of communities.

Promoting Reconciliation within Darfur

352. The need to promote reconciliation must animate all efforts and programmes to bring recovery to Darfur. It is impossible to conceive of reconciliation without people engaging with one another and citizens contributing to debate about the future of communities and society. The responsibility for pursuing reconciliation lies with all the people of Darfur; without their active involvement, all efforts at reconciliation will flounder. All political actors and the Government bear a particular duty to promote reconciliation in Darfur.

353. The Darfur-Darfur Dialogue and Consultation (DDDC) has been established as a Sudanese process that facilitates local peace and reconciliation. It can, and does, play an important role in encouraging various reconciliation measures and can also facilitate Darfur stakeholders to organise their representation in higher-level peace processes. In its future programmes, the DDDC should build on the hearings the Panel has conducted.

354. The transition of the DDDC to an exclusively Sudanese process should start soon and the DDDC should eventually be constituted as an independent Darfurian mechanism for local conflict management, with continuing support from UNAMID. In the meantime, the DDDC should act as a vehicle to allow Darfurians to address the root causes of the conflict and key issues including land and nomadic routes; IDPs; recovery, reconstruction and development and reconciliation. The outcome of these consultations should enrich the peace process.

Representative and Effective Local Governance

355. The capacity of the people of Darfur to use local mechanisms to promote justice and reconciliation, and the ability of the Government to implement constructive policies in Darfur with regard to resettlement, restitution, development, reparations and on justice itself, depend on how people perceive and relate to the civil service and the native administration. From the numerous complaints the Panel heard from the people of Darfur, it is clear they do not regard what currently exists in Darfur as a strong, politically neutral system capable of responding to their problems, needs or aspirations. In this context, the Agenda of the Global Political Agreement should include a review of local government in Darfur, in order to establish structures which are judged to be credible, accessible, effective and accountable to the people of Darfur.

D. AGENDA FOR THE NEGOTIATIONS

356. It is important to emphasise that all of the above key issues, as shall be adopted by the African Union, as well as the important matter of the implementing mechanisms for the

Agreement, which is dealt with below, should form part of the Agenda for negotiations at the talks for the Global Political Agreement.

E. ENGAGING AND MOBILISING THE SUB-REGION

357. It is not possible to end the conflict in Darfur without engaging the sub-region, and especially without normalising the relations between Chad and Sudan.

358. The AU must seek the implementation of existing Agreements, as they relate to the relations between Sudan and its neighbours, and specifically Chad. This can either by done by reviving the functions of the Dakar Contact Group, with respect to Chad and Sudan, urgently to engage the two Governments, as well as other countries, with a view to enabling the two countries to settle their differences. In addition, the Panel calls for a coherent and holistic regional approach for promoting durable peace and stability in the region. In this respect, the Panel calls on the African Union, working closely with the relevant regional organisations and in collaboration with the United Nations and other concerned actors, to take the necessary steps to promote and implement such an approach.

F. THE CHALLENGES AHEAD

Sudan General Elections, the Referendum and Darfur

359. Sudan is faced with the two seminal moments of the 2010 General Elections and the 2011 Referendum on self-determination in Southern Sudan, both of which are of historic importance to her future. The General Elections may impact on the current governance arrangements which underpin the vitally important CPA and lead to new power-sharing arrangements, including a new Government of National Unity. The Referendum will decide whether Sudan remains a united country or splits into two, with South Sudan opting to be an independent country.

360. Darfur is an integral part of Sudan and Darfurians must be able to participate in national democratic decision making. National decisions taken without the full participation of Darfurians will suffer from a deficit of democratic legitimacy. To enable the people of Sudan to approach the next important phase of their history as one nation, without other distractions, there is an urgent need to secure a definitive peace settlement for Darfur before the 2010 General Elections and to ensure nationwide legal and security conditions to allow political activity to be freely conducted. In this respect, the Panel draws attention to the 2008 National Elections Act (Act No XI of 2008) which includes many provisions which, if implemented, would make a decisive contribution to ensuring that the 2010 Elections are free and fair.

361. The AU and UN process to facilitate peace in Darfur should therefore act with this time frame in mind, dictated by sovereign decisions that the people of Sudan have taken. It is imperative that the AU and the UN should diligently and expeditiously discharge their responsibilities towards the Sudanese and African people as a whole, by helping to bring the Darfur conflict to a speedy end.

G. RESPONSIBILITIES OF THE AU-UN MEDIATION

362. The conflict in Darfur will be ended through a process of negotiations involving principally the people of Sudan, and mediated by the AU and the UN. The Sudanese people in general have accepted both these propositions. This places the AU-UN Joint Mediation at the centre of the effort to bring the conflict in Darfur to a definitive conclusion, and with the weighty responsibility of determining the future of Darfur and Sudan, with the consequences that this entails for Africa. Accordingly, it is of critical and strategic importance that the AU-UN Joint Mediation should be properly positioned to discharge its mission.

363. This requires that the Principals, the AU and the UN, should:

a) Satisfy themselves that the Mediation is fulfilling its obligations and responsibilities in accordance with its Mandate and that it has a clear, considered and precise strategy to respond to its Mission;

b) Work with the Mediation to determine a broad time frame within which it aims to conclude the process of negotiations and communicate this to the Sudanese stakeholders/negotiating Parties;

c) Determine the processes according to which the Mediation should submit regular reports to the Principals, reflecting what would have been done consistent with the agreed negotiations strategy;

d) Put in place and promote the processes by which the Mediation should cooperate and liaise effectively with UNAMID and its relevant component parts, as well UNMIS and MINURCAT, as may be required;

e) Ensure that the Mediation has the human, financial and logistical resources to enable it to fulfil its obligations, taking into account the scale of its work and the time frame within which it should conclude its mediation;

f) Take all necessary steps to promote the stature and standing of the Mediation by enlisting national, regional and international cooperation with the Mediation, and explaining its mandate to act on behalf of the AU and the UN. As a corollary, the

Mediation should take steps to keep the Sudanese public informed about the process of negotiations;

g) Establish a Joint Mechanism to support and monitor the work of the Mediation, with a view to enhancing the effectiveness of the process, while avoiding micro-managing the Mediation.

H. PROMOTING A NATIONAL CONSENSUS

364. The peace process should be undertaken in as transparent a manner as possible in order to promote support for the process amongst the population and to render violence less attractive as a means of achieving political objectives. At the same time, just as the people of Darfur will need to be mobilised to engage with the dialogue process, more generally, the Parties to the negotiations should make plans to promote the process and outcome of the GPA across the Sudan as a whole, and should include the detail of such plans in the Framework Agreement as well as the Global Political Agreement. In this way, the people of Sudan, who have borne the brunt and cost of the war, would be empowered to hold their leaders accountable for pursuing and respecting the peace.

I. FOLLOW-UP MECHANISMS

Darfur Implementation and Monitoring Commission

365. An agreement is only as good as the extent of its implementation, and the Sudanese people have repeatedly been disappointed in the incomplete and tardy implementation of peace agreements. Ensuring that an agreement is honoured is as important as reaching that agreement in the first place.

366. The AUPD therefore proposes the creation of a Darfur Implementation and Monitoring Commission (D-IMC) to oversee the implementation of the GPA. The exact composition, leadership, operational structure and functions of the D-IMC should be negotiated and agreed as part of the GPA, taking into account the scale and complexity of the responsibilities arising from the GPA and the principles of inclusivity, participation, representation for women and international involvement.

The Role of the African Union

367. Recognising that the resolution of the Sudanese crisis in Darfur is primarily a matter for the Sudanese people themselves, the African Union, on account of the responsibilities it has already assumed with respect to Darfur, as well as under the CPA, and because of its obligations in representing the people of Africa, must continue to exercise a leadership role. The burden of these responsibilities should be shouldered without delay.

368. The current leadership functions of the AU with respect to Sudan include:

a) Exercising joint responsibility for the operation of UNAMID along with the United Nations;

b) Providing support and guidance to the JCM, in partnership with the UN; and

c) Providing oversight of the implementation of the CPA, including the exercise of self-determination in Southern Sudan, so that the future of the Sudanese people is secured in a manner that ensures human rights, democracy, peace, stability and development.

369. Arising out of the work of the Panel, the AU would now be required to assume a fourth responsibility: to ensure that the Panel's Recommendations, once adopted by the PSC, particularly those directed at the AU, are fully shouldered, and the necessary measures to enable their full and timely implementation are adopted expeditiously.

370. For the AU to fulfil these strategic and technical tasks, its political leadership and institutional capacity needs to be re-invigorated. The AU would need to pay particular attention to:

a) Enhancing the capacity, within the AU Headquarters in Addis Ababa, to support the implementation of the Recommendations. Given the significance Sudan will assume for the AU over the coming years, the AUPD recommends the strengthening of capacity within the Commission and in particular, the establishment of a special unit, within the Peace and Security Department, to support the AU's increased engagement with Sudan;

b) Equipping the AU Liaison Office in Sudan to play a greater support role in the Sudanese peace processes.

The Role of UNAMID

371. The Panel recognises the critical role of UNAMID in the protection of civilians in Darfur, the monitoring and implementation of ceasefire and security arrangements, the promotion of peace, stability and reconciliation, and the facilitation of humanitarian assistance. During its visits to Sudan, the Panel was able to observe for itself the valuable contribution that UNAMID is making to improve the lives of Darfurians. The Panel, however, noted that in order for UNAMID to fulfil its mandate and tasks, it requires greater capacity.

372. The Panel is encouraged by the positive impact that UNAMID has had, even though it remains short of its full deployment. It urges troop contributing countries and other UN Member States to provide, without further delays, the balance of forces and assets, which are considered indispensible for the Mission to fulfil its mandate to protect civilians.

373. The Panel notes the continuing difficulty that UNAMID is experiencing in obtaining essential assets which were promised by the UN Security Council. In particular, although attack helicopters were approved in April 2007, it is only Ethiopia that has provided any to date. The Panel recommends that the required assets, including helicopters, be provided.

374. Given that a large proportion of UNAMID activities relate to police work, the Panel proposes that the civilian police component of UNAMID be further strengthened, including accelerating the tasks of training for community police services for IDPs in camps and those returning to their villages of origin.

375. The Panel observes that as the pattern of conflict in Darfur changes, and opportunities for local peacemaking and reconciliation grow, the role of the civilian components of UNAMID take on increasing significance. The Political Affairs Department, Civil Affairs Department, Human Rights and DDDC all need to be fully resourced.

376. Although UNAMID was not initially given a mandate for Humanitarian Affairs, it has a paramount responsibility in overseeing the security of humanitarian agencies. After the expulsion of international humanitarian agencies in March 2009, it also assumed a *de facto* humanitarian role. Given this development, the Panel proposes that UNAMID take on the authority for the co-ordination of international humanitarian efforts in Darfur, acting together with the Government of Sudan and the humanitarian agencies and organisations.

377. The Panel observes that the reporting and analysis of security incidents and political situation provided by UNAMID is an invaluable resource for informing the AU PSC and UNSC and should be reflected in the positions these two bodies adopt on issues relating to Darfur.

APPENDIX A

The Meetings and Consultations of the Panel and Its Visits to Sudan, Neighbouring Countries and Qatar

I. AUPD INTERNAL SESSIONS

18-19 March 2009, Addis Ababa
2 May 2009, Addis Ababa
15 May 2009, Khartoum
15 June 2009, Khartoum
7 July 2009, Addis Ababa
12 September 2009, Addis Ababa

II. AUPD CONSULTATIONS AND VISITS

1 – 4 April 2009, First Visit to Sudan

Khartoum

- Omar Hassan Al-Bashir, President of the Republic of Sudan
- Ali Osman Mohammed Taha, Vice President of the Republic of Sudan
- Nafie Ali Nafie, Asst. to the President of Sudan
- Mohammed Ali al-Mardi, Sudan's Justice Minister
- Nimer Ibrahim Mohamed, Prosecutor General of Darfur Crimes
- Kamal Mahgoub Ahmed, Legal Adviser, Deputy Chairperson of the Judicial Investigating Committee on Darfur Crimes
- Mamoun Ahmed Mekki, Legal Advisor, Member of the Judicial Investigating Committee
- Hisham Mohamed Yousif, Judge, Member of the Judicial Investigating Committee
- Abdel Dayim Zomrawi, Undersecretary, Ministry of Justice
- Ashraf Qazi, Special Representative of the Secretary General for Sudan (UNMIS)
- Daffalla El Haj Yousif, Chairman of the Investigation Committee on Darfur Crimes and members of the Committee
- Judicial Authority, Sudanese Judicial System
- Opposition Political Parties
- Judicial Investigating Committee
- Civil Society Organisations
- Sudanese Legal Community
- Djibril Yipènè Bassolé, AU/UN Joint Chief Mediator
- International Diplomatic Community

North Darfur, El Fasher

- Wali of North Darfur
- Abu Shok IDP Camp
- UNAMID Leadership
- Civil Society Representatives
- Reconciliation Committee

South Darfur, Nyala

- The Wali of South Darfur
- Meeting with Civil Society Representatives
- Meeting with Tribal Leaders and Native Administration
- UNAMID Leadership
- Ostash IDP Camp

23 April – 5 May 2009, Visit to Neighbouring Countries and Qatar

Libya, 23 – 25 April 2009

- Muammar Al Gaddafi, Leader of the Great Al-Fatah Revolution, Chairperson of the African Union
- Representatives of the Darfurian Movements

Egypt, 25 – 28 April 2009

- Hosni Mubarak, President of Egypt
- Ahmed Aboul Gheit, Foreign Minister of Egypt
- Amr Moussa, Secretary-General of the Arab League
- Sadiq Al-Mahdi, National Umma Party,

Chad, 28-1 April 2009

- Youssouf Saleh Abbas, Prime Minister of Chad
- Toke Dadyy, Governor of Sila Region, Chad
- African Ambassadors accredited to Chad
- Jean-Maurice Ripert, Ambassador of France to Chad
- Louis Nigro, Ambassador of the U.S. to Chad
- Leopold Theodor Heldman, Ambassador of Germany to Chad
- Wang Yingwu, Ambassador of China to Chad
- Georgy Krilov, Ag. Chargé d'Affaire of Russia to Chad
- EU Special Representative to Chad
- Djabal Refugee Camp, Goz Beida
- Sharif Harrir, SLM/A Unity

Qatar, 3 – 5 May 2009

- Hamid bin Khalifa Al-Thani, Emir of Qatar
- Hamad Bin Jassim Bin Jaber Al-Thani, Prime Minister and Minister of Foreign Affairs of Qatar
- Members of the Justice and Equality Movement (JEM)
- Scott Gration, US Special Envoy for Sudan

10 – 25 May, Second Visit to Sudan

Juba, South Sudan

- Salva Kiir Mayardit, First Vice President of the Republic of Sudan

Khartoum

- Omar Hassan Al-Bashir, President
- Ali Osman Taha, Vice President
- Political Parties in the Government of National Unity
- UMMA Party
- Darfur Arab Leadership Group
- Popular Congress Party
- Civil Society Organisations
- Lawyers Group
- Sudanese Judiciary
- SPLM Representatives
- AU/UN Joint Chief Mediator

North Darfur: El Fasher

- Wali of North Darfur
- Civil Society Organisations
- Tribal Leaders
- IDPS in Zamzam Camp

West Darfur

- Visit to Rebel Held Areas in Ain Siro, Jabal Marra, and Meetings with Community Leaders and SLM/A Field Commanders

South Darfur: Nyala

- Wali of South Darfur
- Civil Society Organisations
- IDPS in Kalma Camp

West Darfur: El Geneina

- Wali of West Darfur
- Deputy Sultan of Dar Massalit and Native Administration
- IDPs and community Leaders in El Geneina
- Civil Society Groups

15 – 26 June 2009, Third Visit to Sudan

Khartoum

- Public Hearings with Civil Society Organisations
- Public Hearings with Political Parties
- Djibril Yipènè Bassolé, Joint Chief Mediator

West Darfur, Zalingie

- Public Hearings with: Civil Society Organisations; Representatives of Tribal Leaders; IDP Representatives;

South Darfur, Nyala

- Public Hearings with Civil Society Representatives; Native Administration and IDP Representatives.

West Darfur, El Geneina

- Wali of West Darfur
- UNAMID Leadership
- Public Hearings with IDPs; Native Administration; Civil Society Organisations.
- Visit to Rebel Held Areas in Ain Siro, Jabal Marra to Meet and Discuss with Community Leaders and SLM/A Field Commanders

North Darfur, El Fasher

- Public Hearings with Native Administration, Civil Society Organisations; IDPs and Nomads

7 – 12 July, Addis Ababa

- Ramtane Lamamra, Commissioner for Peace and Security, African Union
- Luis Moreno Ocampo, Prosecutor, International Criminal Court
- Jean-Christophe Belliard, Ambassador of France to Ethiopia
- Ashraf Qazi, Special Representative of the U.N. Secretary General for Sudan, (UNMIS)
- Michael O'Neill, UK Special Envoy for Sudan
- Rodolphe Adada, Joint Special Representative of United Nations/African Union Mission in Sudan (UNAMID)
- Alan Le Roy, UN Undersecretary-General for Peacekeeping Operations

- Djibril Bassolé, AU/UN Joint Chief Mediator
- Comfort Ero, International Centre for Transitional Justice
- Chidi A. Odinkalu, Open Society Justice Initiative
- Dismas Nkunda, Darfur Consortium
- Fouad Hikmat, International Crisis Group

2 – 6 August, Libya, Central African Republic and Ethiopia

- Representatives of Darfurian Movements, Tripoli
- President François Bozize, Central African Republic;
- Prime Minister Meles Zenawi, Ethiopia

23 – 29 August, Fourth Visit to Sudan, Consultations

Khartoum

- Omar Hassan Ahmed Al-Bashir, President
- Salva Kiir Mayardite, First Vice-President of the Sudan
- Ali Osman Taha, Vice President
- National Congress Party
    - Ibrahim Ahmed Omer
    - Mohammed El Mahdi Mandour
    - Minghanc Mansour Badawi
    - Ahmed Suleiman Balah
    - Omar Adam Rahama
    - Mustafa Osman Ismail
    - Mohammed Nahied Salih

- Sudan People's Liberation Movement
    - Riak Machar
    - Malek Agar
    - Pagan Amom
    - Deng Alor
    - Yasir Arman
    - Yen Matthew
    - Priscilla Joseph

- Minni Arko Minawi, Asst. to the President
- Al-Sadig El-Mahdi , National Umma Party
- Hassan Hilal, Democratic Union Party (original)
- Hassan Al-Turabi, Popular Congress Party
- Mubarak El-Fadil El-Mahdi, Umma Party
- Democratic Union Party (Original)
- Civil Society Organisations

- Representatives of Lawyers
- Representatives of Arab Groups
- Abel Alier, Chair of the National Electoral Commission
- Abdella Ahmed Abdallah, Deputy Chair of the National Electoral Commission

South Darfur, Nyala

- Representatives of Tribal Leaders and Native Administration, from the three states of Darfur
- Representatives of IDPs from North and South Darfur
- Representatives of Civil Society Groups from the three states of Darfur

West Darfur, Ain Siro

- Rebel commanders
- Community Representatives

10 – 12 September 2009, Addis Ababa, Consultations with International Stakeholders

- Jean Ping, Chairperson of the AU Commission
- Rodolphe Adada, Joint Special Representative (UNAMID)
- Liu Guijin, Special Representative of the Government of China on Darfur, Sudan
- Torben Brylle, EU Special Representative for Sudan
- Ahmed Sallah-Eldin Noah, Ambassador and Permanent Representative of Arab League to Ethiopia, AU and UNECA
- Permanent Representatives of AU Member States to the African Union
- Evgeni Goverdovskii, Russian Federation
- Ashraf Qazi, Special Representative of the UN Secretary General (UNMIS)
- Michael O'Neill, UK Special Envoy for Sudan
- Sherif Mahamat Zene, Ambassador of Chad to Ethiopia
- International Partners of the African Union
- Idris Abu Garda, President, United Resistance Front (URF)
- Sudan Liberation Movement/Army (SLM/A)

13 – 16 September, Libya

- Muammar Al Gaddafi, Leader of the Great Al-Fatah Revolution and Chairperson of the African Union
- Sudan Liberation Revolutionary Forces (SLRF)

As part of the interaction with the international stakeholders, and at the request of the AUPD, the following organisations and individuals sent written submissions on issues relevant to the mandate of the panel:

- Antonio Cassese, Judge and President of the Special Tribunal for Lebanon, and former Chairman of the UN International Commission of Inquiry on Darfur;
- Navanethem Pillay, UN High Commissioner for Human Rights, Office of the United Nations High Commissioner for Human Rights (OHCHR);
- The African Commission on Human and Peoples' Rights;
- Liu Guijin, Special Representative of the Government of China on Darfur;
- Mikhali Margelov, Special Envoy of the Russian Federation to Sudan;
- Mo Ibrahim, Chairman of the Board, Mo Ibrahim Foundation;
- Torben Brylle, EU Special Envoy to Sudan;
- Ahmed Ben Bella, Former President of Algeria, Chairperson of the Panel of the Wise, African Union Commission;
- Edward C. Luck, UNSG Special Adviser on the Responsibility to Protect, International Peace Institute;
- Kenneth Roth, Executive Director, Human Rights Watch;
- Issa Maraut, Special Envoy of France for Darfur;
- Jerry Fowler, Chairperson, Save Darfur Coalition.

APPENDIX B

ANALYSIS OF DATA FOR VIOLENT FATALITIES IN DARFUR

Overview

1. As part of its investigations, the AUPD compiled and analysed information relating to fatalities from violence in Darfur during the period 1 January 2008-31 July 2009, corresponding to the first nineteen months of the deployment of UNAMID.

2. Two independent sources of data were used to produce a merged dataset. One source is the compilation of incident reports by UNAMID Joint Mission Analysis Centre (JMAC) and the other is an open-source search in the (English language) public realm. The open source data indicates a higher figure by approximately 10-15%, but the two converge on precisely the same pattern and trend. This gives confidence that the results are accurate.

3. The data provide estimates for total fatalities between January 2008 and July 2009 in the range of 2,112 - 2,429. Most fatalities occurred in South Darfur, with a large proportion due to inter-tribal fighting among groups aligned with the Sudan Government, most of them Arabs. In West Darfur and North Darfur there were fewer incidents, mostly armed engagements between the Sudan Government and the Armed Movements; these incidents show a declining trend.

4. The pattern of violence changed during the 19 month period under review. There is a discernible decrease in lethal violence. The pattern increasingly shows a multi-sided conflict which is close to being a "war of all against all." Inter-tribal clashes were common, especially in South Darfur. Regular and irregular Government forces fought one another, and "signatory" Armed Movements fought each other, as well as pro-Government forces fighting the "non-signatory" Armed Movements.

Methods

5. For this analysis, two datasets were used. One is the JMAC compilation of all incident reports. These reports are provided by UNAMID sectors and departments, plus UN agencies and NGOs operational in Darfur and other incidents compiled by the police, camp authorities, etc, which are all entered into a master list. From this list, those reports referring to fatalities due to violence have been extracted. Instances of motor vehicle accidents and suicides have then been removed, though cases of accidental deaths due to gunshots or ordnance (e.g. accidental discharge of weapons, landmines and unexploded ordnance, or shots fired at weddings) remain in the dataset. Reports which were later revised or discounted have been adjusted accordingly. The resulting dataset was analysed to produce numbers, patterns and trends.

6. The second dataset is a compilation of all English language reports in the public realm, drawn from a diverse range of materials including press accounts, NGO and civil society reports, public statements by UN agencies, etc., for the 15 months to the end of March 2009. These were extensively analysed to minimise duplication of reports. From this compilation, those reports referring to fatalities were extracted. The two datasets were then merged and where divergent accounts existed of the same event, the source of the divergence was painstakingly tracked down.

7. The analysis of the data can only be as good as the reliability and comprehensiveness of the reporting. It is noticeable that the quality of the UNAMID JMAC incident reports increases over time. In the first few months of UNAMID deployment there are missing data, including incidents in which no numbers of fatalities or casualties are given. During this period there was fierce fighting between the Sudan Government and JEM in West Darfur. By the middle of 2008, incident reports with only "round number" fatalities are rare, and by the end of the year, almost all figures are backed by more detailed reports (some of which revise earlier numbers). From April 2009, the JMAC reports show an increased rigour and analysis.

8. The category "inter-tribal fighting" demands special attention. A large number of incidents, including many of those with the highest numbers of fatalities, occurred in armed clashes between armed tribesmen. The vast majority of these incidents occurred in South Darfur. They are almost all among Arab tribes including the Fellata, with about 100 fatalities attributable to internal strife within the Gimir tribe. The reports of most of these incidents do not distinguish between combatants and civilians, and indeed the distinction may be difficult to draw in these cases. The category of "those killed in inter-tribal fighting" refers to these incidents. It does not include any incidents in which there were armed clashes between militia and non-Arab tribes such as the Fur or Masalit.

9. There is a very good match between the two datasets. The majority of incidents are reported in similar or identical ways in each one. The UNAMID dataset contains 2,112 fatalities during the 19 months reference period. When this is merged with the open-source dataset the figure rises by 124 to 2,246. In addition, there are incidents in which both datasets contain a clear indication of fatalities, with no number given. These are readily identifiable as incidents of combat between the Sudan Government and the Armed Movements, in which one or both of the parties did not provide details about the fatalities among their combatants. Where differences are significant to the analysis and conclusions, they are reported below.

10. The data were analysed for (a) overall numbers of people killed, (b) geographical breakdown of fatalities for each of the Darfur states, (c) trends over time, both overall and according to state, and (d) types of violence and the question of who are the perpetrators and who are the victims.

Results

Overall Numbers

11. The UNAMID incident database contains reports of 2,112 fatalities from violence. Excluding incidents in which the categories for the victims could not be precisely identified, they can be broken down into the following categories:

Civilians (excluding inter-tribal)	585 deaths
Of which, IDPs	90
Victims of common crimes	51
Combatants	675
Of which, Sudan Government regular forces	333
Policemen killed by bandits	16
Irregular militia	153
Armed Movements (signatory)	98
Armed Movements (non-signatory)	91
Those killed in inter-tribal fights	635
Criminals	14
Unidentified	203

12. Note that "common crimes" excludes any crime committed by an individual in uniform or suspected to a militia member. An additional 60 killings by such individuals could equally have been classed as "common crimes."

13. After removal of duplicate events and reports which were later discounted, the open source dataset contains 124 additional fatalities from four major incidents. Of these, 83 occurred in West Darfur during the first six months of UNAMID deployment, 20 in the following six months, and 21 in 2009. Violent incidents including Darfurian groups which took place outside the geographical boundaries of Darfur were excluded, including internecine conflict within Chad (32-125 fatalities reported), and the JEM attack on Omdurman (297 fatalities reported).

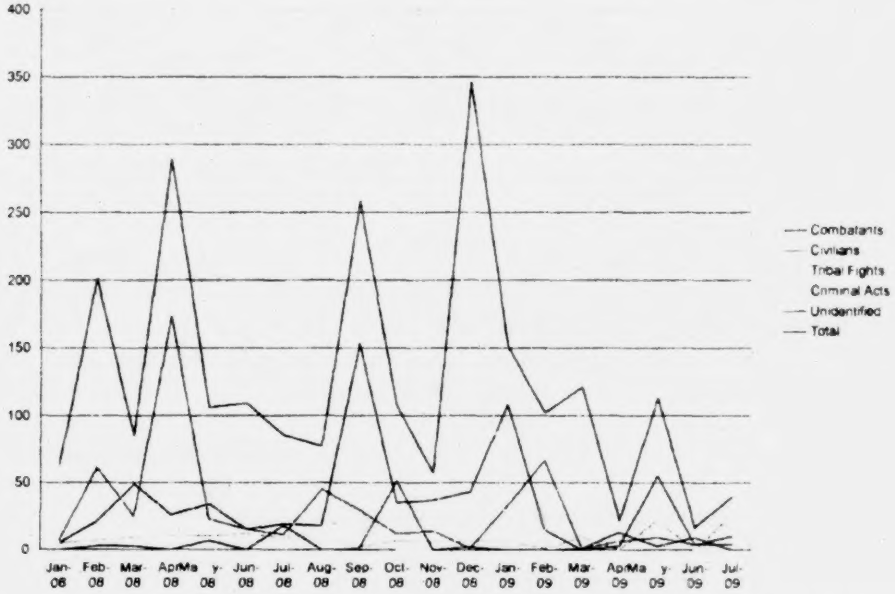
14. The discrepancies between the datasets can be attributed to the following factors: (a) UNAMID reporting in the first half of 2008 had several gaps, including of civilian and combatant fatalities in incidents in West Darfur; (b) some UNAMID reports contain indications of combatant deaths but do not include figures; and (c) there is a handful of individual homicides not in the JMAC data. The chief source of discrepancies, eliminated during the analysis, was that the open source data included initial reports which were subsequently discounted by UNAMID investigation, which revised the figures downward.

Geographical Pattern

15. The majority of fatalities (68%) occurred in South Darfur. West Darfur had 14% and North Darfur had 18%.

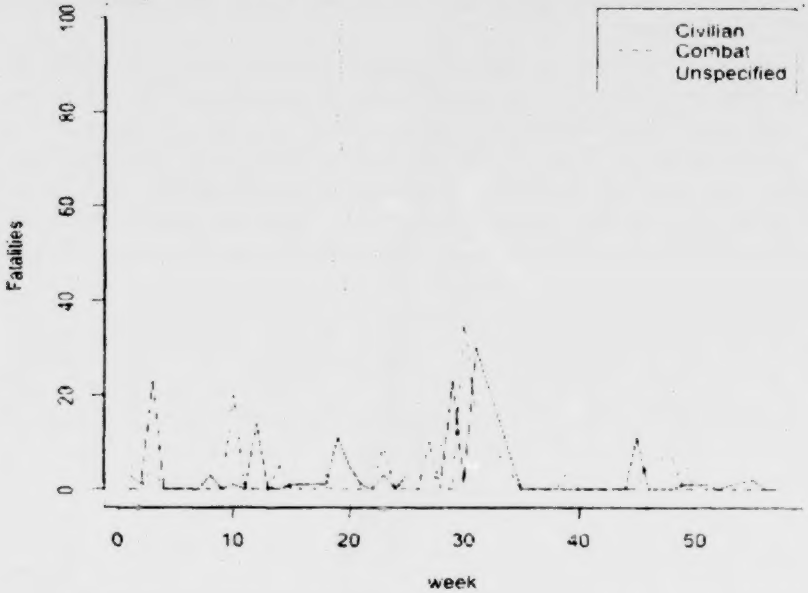
Trends Over Time

16. The following graph shows the overall trend in fatalities over the period up to March 2009. There is a discernable downward trend, especially during 2009. There is also a noticeable shift from fatalities associated with armed clashes between the Armed Movements and the Sudan Government, with related civilian fatalities, towards inter-tribal clashes.

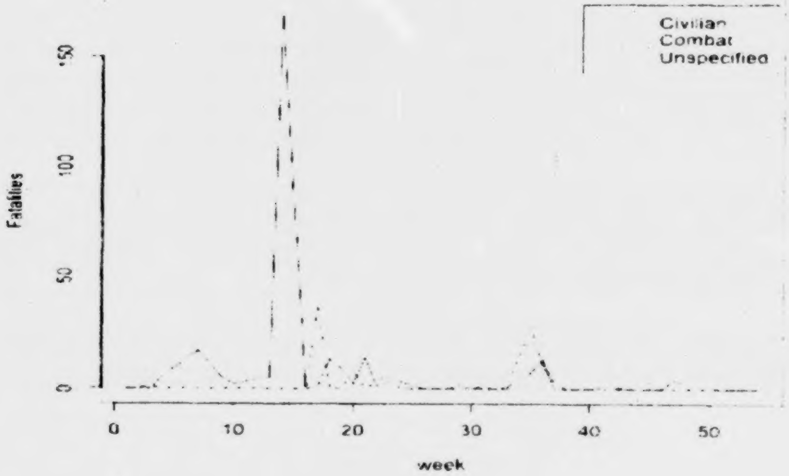


17. If we distinguish between the three Darfur states, distinct trends can be seen. The following three graphs show the trends for each of the three states. They also illustrate how the fatalities are disproportionately attributable to a relatively small number of incidents which cause large numbers of fatalities.

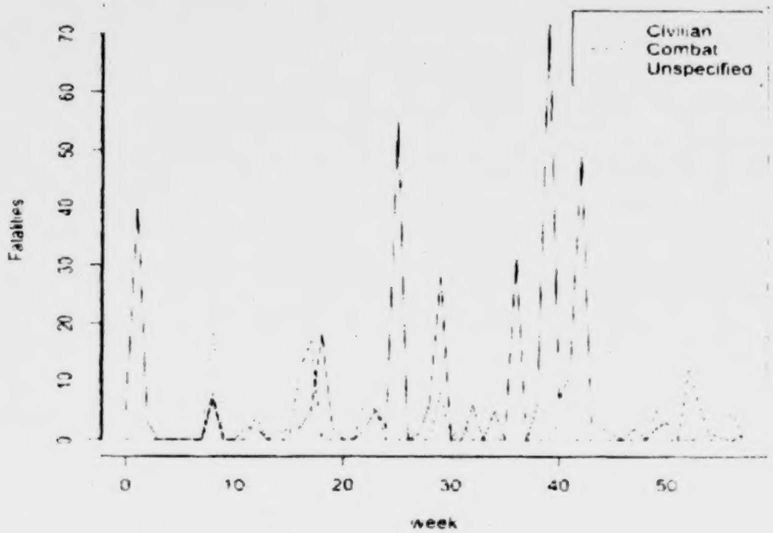
18. The first graph, for West Darfur, shows early peaks followed by a downward trend leading to few incidents involving fatalities in late 2008 and early 2009:



19. North Darfur (below) shows a different pattern, with an unpredictable situation of sporadic incidents, but with a general decline.



20. For South Darfur, the pattern is different again. There is a tighter clustering of incidents and, during the time period, no noticeable reduction in the pace of fatalities.



21. From April 2009, the figures are increasingly reliable. More rigorous investigation methods allow for greater confidence in the reports.

Perpetrators and Victims

22. The dataset can be broken down to provide an analysis of who the perpetrators are and who the victims are. The following is based on the analysis of the JMAC reports, excluding those incidents in which the group responsible for killing could not be identified. As a result, the figures represent about 85% of the incidents.

Table: Who is Killing, Who is Dying

Dying (R) *Killing (L)*	Regular forces	Irregular forces	Signatory movements	Non-sig. movements	Tribes	Bandits	Civilians	Total
Regular forces	15	24	26	76	8	14	131	294
Irregular forces	27	84	2	1			85	199
Signatory movements	8	9	48	12			203	280
Non-sig. Movements	259	35	19	2	13		36	364
Tribes	4		3		614			621
Bandits	16						81	97
Civilians	4	1					51	56
Total	333	153	98	91	635	14	585	1909

23. There is a difficulty in coding some of the incidents because on several occasions regular and irregular Sudan Government forces conducted joint operations (in which case the figures are attributed to the regular forces). On one occasion the signatory and non-signatory groups fought together against the Sudan Government (in this instance the figures are put in the "non-signatory" row).

24. The level of fatalities due to inter-tribal conflicts is striking. These are almost exclusively in South Darfur and are among tribes aligned with the Sudan Government, most of them Arabs. One implication of this is that more Arabs than non-Arabs were killed in Darfur during this time period.

25. A second noticeable factor about this table is that each of the nine boxes in the upper-left hand corner contains a number. There have been incidents in which regular forces clashed with the regular forces (e.g. Sudan Armed Forces against Border Intelligence); cases of the regular forces fighting the irregular forces (e.g. SAF against militia); clashes between the regular forces and the "signatory" Armed Movements; as well as armed clashes between the Sudan Government forces and the "non signatory" Armed Movements. The "signatory" Movements also fought against one another. Of the total fatalities in this table, 253 (13%) occurred in clashes among forces formally aligned with the Sudan government.

26. It is notable that the non-signatory Armed Movements did not fight one another. Both of the fatalities in this category were extra-judicial executions within a single group. The fragmentation of the Armed Movements has not led to internecine bloodshed during this time period.

27. The number of fatalities due to fighting between the Sudan Government regular and irregular forces, and the Armed Movements, including all violence by these groups against the civilian population, is 637 or 33% of the total. This indicates that a ceasefire between the Government and Armed Movements would not, in itself, eliminate fatalities.

28. The categories of crime, inter-tribal fighting and attacks by irregular forces and signatory movements overlap. The category "bandit" refers to individual attacks in which the sole motive appears to be crime.

29. During the 19 months, 90 IDPs were killed. Thirty eight of these deaths occurred as the result of a single incident in Kalma camp in August 2008.

30. Aerial bombardment was responsible for 70 deaths during the period, including 29 civilians, ten combatants and the remainder unspecified.

Conclusions

31. This exercise demonstrates the usefulness of rigorous data on fatalities and the importance of rigorous data collection and analysis. The analysis provides a figure for the number of people killed in violence in Darfur during the first 19 months of UNAMID deployment which is close to definitive. The UNAMID figures appear to have missed or under-reported some incidents, mostly in early 2008, which amount to 10-15% of the total.

32. The picture that emerges is one of a low-intensity and many-sided conflict, characterised by several distinct patterns of lethal violence, including combat, criminality, attacks against civilians by all parties and inter-tribal fighting. However, the dominant forces inflicting violence against civilians are the regular and irregular forces of the Sudan Government and the Armed Movements.

APPENDIX C

THE AFRICAN UNION HIGH-LEVEL PANEL ON DARFUR

THE CHAIRPERSON AND MEMBERS OF THE AUPD

President Thabo Mvuyelwa Mbeki, Chair of the AUPD

President Thabo Mvuyelwa Mbeki served as President of South Africa from 1999 until 2008. As a member of the ANC in exile, he served in the ANC offices in Botswana, Swaziland, Nigeria and Zambia. In 1975, he became a member of the National Executive Committee of the ANC. In December 1976, he was sent to Nigeria as a representative of the ANC, and was appointed head of the ANC's information department in 1984 and, head of the international department in 1989, working with Mr. Oliver Tambo, then President of the ANC.

In 1989, Mr. Mbeki led the ANC delegation that conducted secret talks with the South African government. These talks led to the unbanning of the ANC and the release of political prisoners. He also participated in many of the other important negotiations between the ANC and the government that eventually led to the democratisation of South Africa. Mr. Mbeki became co-deputy President of South Africa in May 1994, after the first democratic election in South Africa, and sole deputy-president in June 1996. He succeeded Nelson Mandela as ANC president in December 1997 and as President of the Republic in June 1999. Mr. Mbeki was subsequently re-elected for a second term in April 2004. In his capacity as Deputy President and then, President, Mr. Mbeki helped to successfully resolve the conflicts in Burundi, Democratic Republic of Congo (DRC), the Ivory Coast, and Zimbabwe. Mr. Mbeki earned a Master of Economics degree from the University of Sussex in England, while in exile.

Gen. Abdulsalami Abubakar, Member of the AUPD

Gen. Abubakar served as Head of State and Commander-in-Chief of the Federal Republic of Nigeria, from 1998 – 1999. After leaving office, Gen. Abubakar had illustrious international engagements, including as Chairman of the Commonwealth Observer Group, in 2000. In August 2000, he was appointed as U.N. Secretary's General's Special Envoy to the Democratic Republic of Congo. In June 2002, he was Chairman of the Military Sub-Committee for the Inter-Congolese Dialogue. In 2002, he served as President of the African Strategic and Peace Research Group. In May 2003, he was appointed by the Economic Community of West African States (ECOWAS) as Facilitator for the Liberia Peace Talks. In 2004, he was appointed as Special Envoy of the AU Chairperson to Sudan and Chad. After serving as the Commonwealth Secretary General's Special Envoy to the Gambia, he later became the U.N. Secretary General's

Special Envoy to the country. General Abubakar was born in Minna, Niger State in 1942. He enlisted in the Nigerian Air force in 1963. He became Chief of Defence Staff in 1993 and became a General in 1998.

President Pierre Buyoya, Member of the AUPD

President Pierre Buyoya served as Burundi's Head of State, twice, from 1987 to 1993 and from 1996 to 2003. In 2008, Mr. Buyoya was appointed by the African Union to lead a mission to the Sudan and Chad. From 1993 to 1996, he was member of "Council for African Advisers," a World Bank think-tank chaired by the Bank's Vice President in charge of Africa. Since 2004, he has served as a consultant for the International Organization for Francophone countries. In this capacity, he has led delegations to monitor elections or promote political dialogue in Guinea Bissau, Central African Republic, Mauritania, DRC, and Niger. In Burundi, he heads an NGO called "Foundation for Unity, Peace and Democracy," dealing with street and orphaned children and assisting them in the area of vocational education. As a Former President, he also serves as a Senator in Parliament.

Ahmed Maher El Sayed, Member of the AUPD

Mr. Ahmed Maher served as Egypt's Foreign Minister from 2001 until 2004. Prior to this appointment, Mr. Maher served at Egyptian Embassies in Kinshasa, Paris, the Consulate-General in Zurich, Lisbon and Brussels, where he was accredited by the European Union. In 1992, he was appointed ambassador to Washington, a role he fulfilled until 1999. In 2000, he became director of the Arab Fund for Technical Assistance to African States at the Arab League. He was also posted as Egypt's Ambassador in Moscow. Mr. Maher worked at the office of the President as Advisor for National Security Affairs from 1971-74 and was appointed Director of the Foreign Minister's office from 1978-1980. Mr. Maher participated in the Camp David peace negotiations in 1978 and the Taba peace negotiations in 1988 and has represented Egypt in many international conferences. Born 14 September 1935, Mr. Maher received his law degree from Cairo University and started his diplomatic career at the Foreign Ministry in 1957, serving as a junior diplomat in Congo, France and Switzerland in the 1960s.

Judge Florence Ndepele Mwachande Mumba, Member of the AUPD

Judge Florence Mumba was appointed, in May 2009, by the UN Secretary General Ban Ki-moon, as the reserve judge in the courts of Cambodia for the prosecution of crimes committed during the period of Democratic Kampuchea. Prior to this appointment, Judge Mumba served, from 2003 – 2005, as Judge of the Appeals Chamber for the United Nations International Criminal Tribunals for the former Yugoslavia and Rwanda. From 1999 – 2001, Judge Mumba was elected Vice President of the U.N. International Criminal Tribunal for the former Yugoslavia, the first African woman to hold the office.

In November 1997, Judge Mumba was elected Judge of the U.N. International Criminal Tribunal for the former Yugoslavia, at the Hague. She served both as a Trial Judge and a Presiding Judge. Judge Mumba was a member of the U.N. Commission on the Status of Women from 1992 – 95, and served as Director for Africa on the International Ombudsman Institute Board. From 1994 – 2003, Judge Mumba served as Commissioner on the International Commission of Jurists. In this capacity, she participated in drafting the Protocol to the African Charter on Peoples and Human Rights. Currently, Judge Mumba is Chair of the Electoral Commission of Zambia. A native of Zambia, Judge Mumba received her law degree in 1972, from the University of Zambia. Judge Mumba started her professional career as a Legal Aid Counsel at Zambia's Ministry of Justice, and became Director of Legal Aid Department in 1977, and became, in 1980, the first female High Court Judge in Zambia. In 1997, Judge Mumba was appointed as Supreme Court Judge.

Kabir Abdulfatah Mohammed, Member of the AUPD

From 2006 – 08, Mr. Mohammed served as Executive Secretary of the Nigerian Petroleum Technology Development Fund. Prior to this appointment, he served as Legal Advisor and Special Assistant to President Obasanjo's Chief of Staff. From 1993 – 99, he was also Legal Adviser to the National Security Adviser. In March 2005, Mr. Mohammed was President Obasanjo's Special Envoy to Sudan and the African Union and worked on the establishment of an African Panel on Criminal Justice and Reconciliation on Darfur. He also served as Nigeria's Representative on the African Union's Panel of Legal Experts on the implementation of the U.N. Security Council Resolution 1593.

Rakiya Omaar, Member of the AUPD

Ms. Omaar, a lawyer by training, worked in the International Labour Organisation from 1980-1985, as a special assistant on Africa to the Director-General. After a stint working as a lawyer, she served as the first director of the human rights organization, Africa Watch, from 1988-1992. In 1993, she became a founder and co-director of the human rights group, African Rights, becoming sole director in 1998, a position she retains today. Ms Omaar has researched and published many books, reports and articles on human rights issues in Africa. Since 1994 to the present, Ms Omaar's work has focused, in particular, on the Rwanda genocide and its consequences, and she has written extensively on the subject. Miss Omaar studied history at the University of Oxford and law at the University of Cambridge.

APPENDIX D

EXPERTS

Barnabas Philip Afako, Lawyer

Professor Salah Eddine Amer, University of Cairo, Egypt

Aref Mohammed Aref, Lawyer, Bar of Djibouti

Catherine Cisse, Executive Director, International Institute for Historical Justice and Reconciliation, The Hague, Netherlands

Professor Tiyanjana Maluwa, Director, School of International Affairs, Pennsylvania State University, US

Dr. Sydney Mufamadi, former South African Minister for Safety and Security and later Minister for Provincial and Local Government. Currently, Honorary Professor at the Nelson Mandela Metropolitan University, South Africa

Rakiya Omaar, Human Rights Lawyer, Director, African Rights, and also a member of the AUPD

Professor Jean-Emmanuel Pondi, Head of the Department of International Politics at the International Relations Institute of Cameroon (IRIC), University of Yaoundé

Dr. Alex de Waal, Program Director, Social Science Research Council, New York, US

APPENDIX E

AFRICAN UNION COMMISSION STAFF/SECRETARIAT

Mr. El Ghassim Wane, Ag. Director, Peace and Security Department, and the staff of the Department

Dr. Dawit Toga, Political Analyst, Conflict Management Division, co-coordinator and designated focal point for the AUPD

Ambassador Mahmoud Kane, Head of the AU Liaison Office, Khartoum, Sudan, and the entire staff of the Office

AU Liaison Office, N'djamena, Chad

AU Permanent Delegation to the League of Arab States, Cairo, Egypt

APPENDIX F (1)

Letter of Apology

Mr. Adada, Joint Special Representative (UNAMID)
Leadership of UNAMID
El-Fasher

On behalf of the internally displaced persons of "Kalma" camp and on our own behalf, we express our sincere gratitude for the good leadership during your present mandate.

We are pleased to note your unlimited cooperation and your commitment to meet our demands in order to achieve the expected goals. We also commend the efforts you made to ensure our security.

We commend you for the professionalism and efficiency demonstrated by yourself, your offices and your leadership, here in Nyala, in order to resolve the many problems between us and the Sudanese Government, which constituted a real threat against us, and without your intervention, could have led to serious consequences.

These developments and efforts made by officers of the Mission have, somehow, helped to establish trust between us and the Sudanese Government. The internally displaced persons camp of "Kalma" camp support the last meeting you have with us to reach a consensus with the Government of the Sudan.

We regret our earlier erroneous position. It was indeed an error on our part, and the error is a characteristic of human beings. Despite this, and in addition of your mission leadership, you have shown fatherly feeling in assuming our errors and failures.

We have noticed these fatherly feelings in an evident manner following our erroneous opposition to your report on the security situation in Darfur that you submitted, in good faith, in the interests of internally displaced persons in Darfur.

Sir,

It appears clearly that without your outstanding efforts, your commitment and your personal will, all our claims could not be met, in addition to the assistance provided by your mission, as well as civil society, especially after the expulsion of NGOs.

We have been mandated by the internally displaced persons of Kalma camp to express our deep regrets and sincere apologies for our erroneous and unfounded positions taken against you and your mission. We hope that our cooperation with you and your staff continues in order to support the process of sustainable peace in Darfur.

We are also hoping that you continue to give us your valuable assistance in accordance with the aspirations for which the Mission is working for in the interests of the people of Darfur.

Officials of the Kalma camp

The following persons have signed below:

- Ali Abdallah (Camp leader)
- Rapporteur (signature not cleared)
- Guebbani Adam (centre 2)
- Ibrahim Ahmed (centre 3)
- Adam Shraf-Eddine (centre 6)
- Hawa Youcef Yahia (Womens' Association)
- Othmane Mohamed.

Copy to: - Landung Badji
- OCHA
- Chief of Police of Nyala, UNAMID

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APPENDIX F (2)

To The Commander of UNAMID
For the care of Mr. Adada

We express our gratitude and appreciation for the efforts of UNAMID through various kinds of patrols, especially at night and reporting on the actual situation faced by IDPs. This is an action that deserves our appreciation.

As culmination of all these efforts, we ask you, on behalf of the displaced camp of "Kalma", to install a fence around the camp with barbed wire and to determine the Pathways to the main entrance and Release of the Displaced.

Furthermore, we ask that you place a system of electric lighting to deter criminals who sneak at night into the camp to assault the occupants and also to counter the security threats posed by conspiracies and provocations made by the Government against the displaced camp of "Kalma".

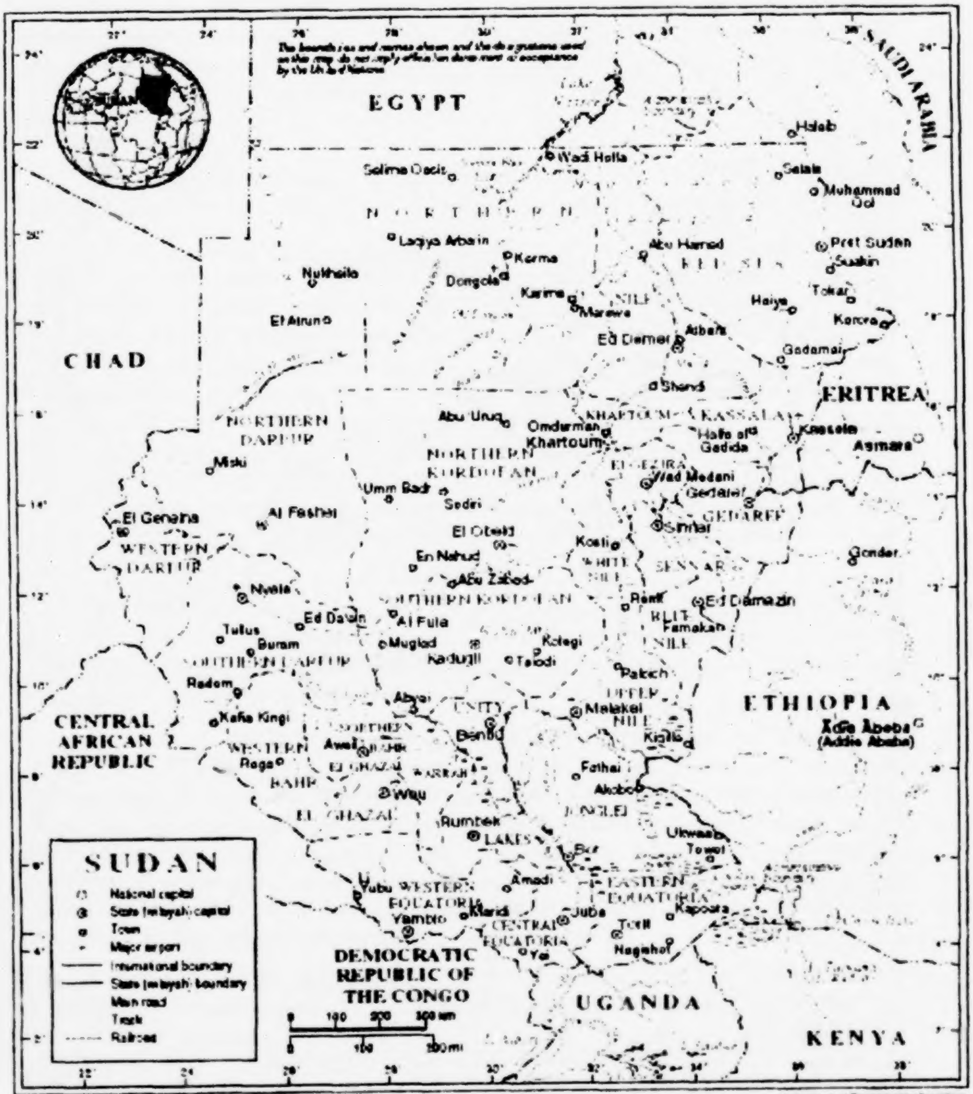
We hope that this application will be accepted and implemented urgently. Please accept, Excellency, the assurances of our gratitude and high consideration.

Leaders of "Kalma" camp

24/7/2009

APPENDIX G

MAPS

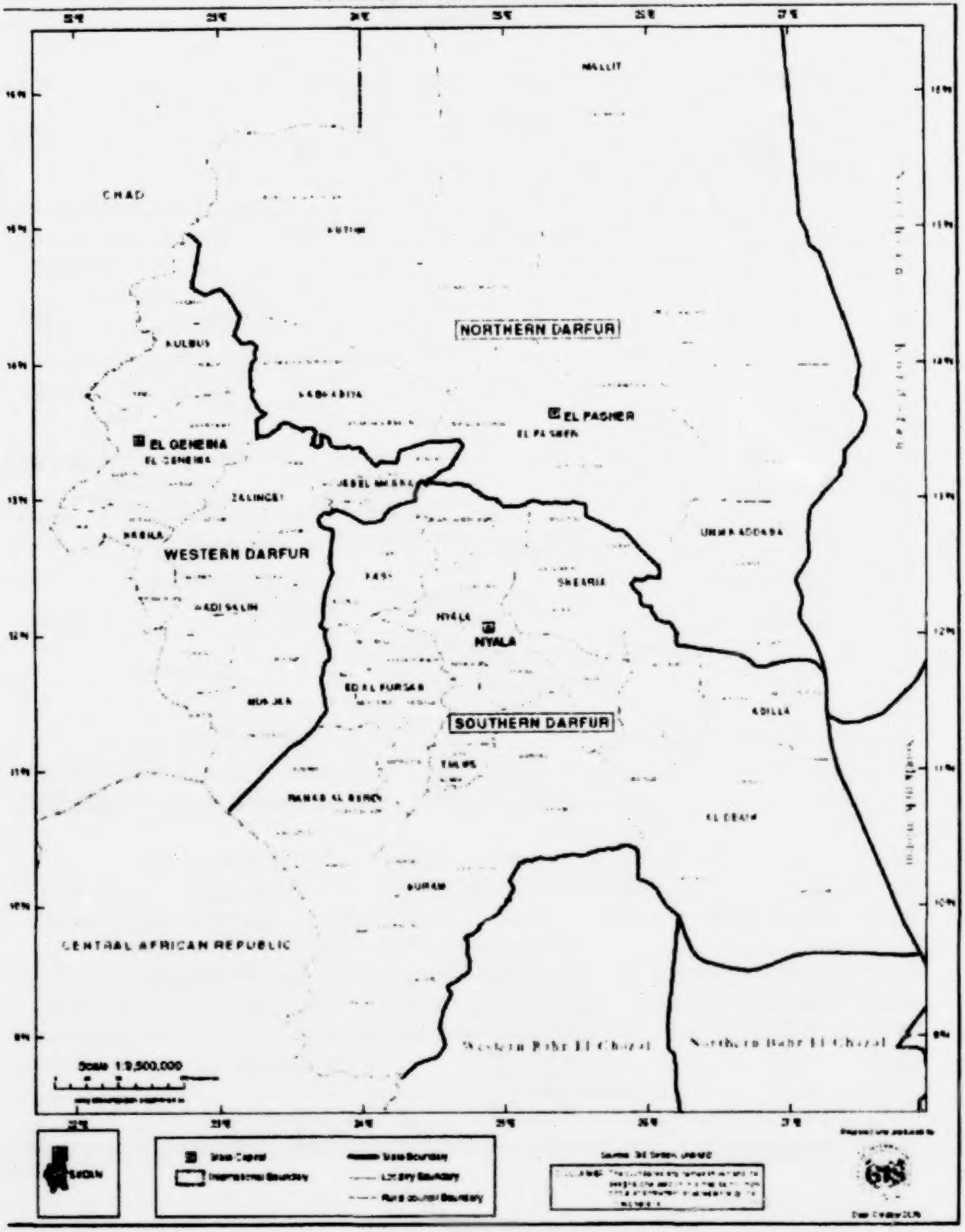


The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.

Map No. 3707 Rev. 10 UNITED NATIONS
April 2007

Department of Peacekeeping Operations
Cartographic Section

DARFUR STATE ADMINISTRATIVE



Annex II

Communiqué of the 207th meeting of the African Union Peace and Security Council

[Original: English]

The Peace and Security Council of the African Union (AU), at its 207th meeting held in Abuja on 29 October 2009, at the level of Heads of State and Government, considered the report of the AU High Level Panel on Darfur (AUPD), and adopted the following decision:

The Council,

1. *Endorses* the report of the African Union High Level Panel on Darfur (AUPD) [PSC/AHG/2(CCVII)] and the recommendations contained therein;

2. *Congratulates* the Chairperson of the AUPD, former President Thabo Mbeki of South Africa, the other members of the Panel, namely General Abdulsalami Abubakar, former Head of State of the Federal Republic of Nigeria; Mr. Pierre Buyoya, former President of Burundi; Mr. Alhaji Kabir A. Mohammed (Nigeria), former State House Counsel and Special Envoy of former President Olusegun Obasanjo on the trial of suspects of war crimes and human rights violations in Darfur; Hon. Judge Florence Ndepele Mwachande Mumba (Zambia), Judge of the Supreme Court; Mr. Ahmed Maher El Sayed, former Foreign Minister of Egypt; and Rakiya Abdillahi Omaar (Somalia), Director, African Rights; and the team of experts that supported their work, for the breadth of the consultations they have undertaken, the comprehensiveness of their report, and the relevance of their recommendations;

3. *Expresses appreciation* for the cooperation extended to the Panel by the Sudanese Government, opposition political parties, armed opposition movements, internally displaced persons (IDPs), pastoralists and the Darfurian civil society, and other Sudanese parties, as well as international stakeholders;

4. *Recalls* its previous decisions and communiqués on the situation in Darfur, in particular decision PSC/MIN/Comm(CXLII) of 21 July 2009, in which, among others, it requested the Chairperson of the Commission to take all necessary steps for the establishment of an independent High-Level Panel made up of distinguished Africans of high integrity, to examine the situation in depth and to submit recommendations to the Council on how best the issues of accountability and combating impunity, on the one hand, and reconciliation and healing, on the other, could be effectively and comprehensively addressed;

5. *Reaffirms the commitment* of the AU to combat impunity, in line with the relevant provisions of the AU Constitutive Act, and strongly condemns the violations of human rights in Darfur. The Council urges, once again, the United Nations Security Council to heed the AU's call for the deferral of the process initiated by the International Criminal Court (ICC) against President Omar Hassan Al-Bashir, in the interest of peace, justice and reconciliation;

6. *Stresses* the need for speedy progress in the search for peace, security, justice and reconciliation in Darfur, bearing in mind that, while the situation on the ground has significantly improved compared to the height of the crisis in 2003-

2004, civilians in that region continue to be exposed to the risk of violence and that millions of people continue to live in IDP camps or as refugees in neighbouring Chad. The Council also stresses the need to create inclusive and conducive conditions for the successful holding in Darfur, as well as in the rest of the country, of the April 2010 national elections provided for by the Comprehensive Peace Agreement (CPA), and to ensure that Darfur fully participates in the national debate arising from the 2011 self-determination referendum in Southern Sudan;

7. *Expresses its conviction* that the achievement of lasting peace and reconciliation in Darfur requires that the Sudanese stakeholders take full ownership of the process and that, given the necessary support, the people of Sudan will be able to bring to an end the conflict in Darfur in an inclusive, peaceful and expeditious manner, bearing in mind that Darfur is a manifestation of the broader political and other challenges facing Sudan as a whole. The Council stresses that the international community needs to play a supportive role, based in a proper understanding of the causes and consequences of the conflict in Darfur;

8. *Stresses* the importance of the general elections scheduled for April 2010 in the overall efforts towards the democratic transformation of the Sudan, and for addressing in a lasting manner the many challenges facing the country;

9. *Welcomes* the progress made in the deployment of the African Union-United Nations Hybrid Operation in Darfur (UNAMID), as well as the efforts being deployed to facilitate the search for a lasting solution. In this respect, the Council welcomes the steps taken for the early holding of negotiations in Doha under the auspices of the Joint Chief Mediator and the Government of Qatar, as an integral part of the approach to peace as articulated in the report of the AUPD;

10. *Stresses* that the recommendations contained in the report of the AUPD (paras. 280-377) provide a clear and sound road map for achieving peace, justice, reconciliation and healing in Darfur, and thereby contribute to the overall objective of promoting sustainable peace and stability in the Sudan, and decides that these recommendations shall be the basis of the AU engagement in Darfur and its interaction with its international partners;

11. In order to support the peace process and the implementation of the recommendations contained in the report of the AUPD, the Council:

(a) *Requests* the Commission, in consultation with the United Nations Secretariat, to support and exercise due oversight over the process of the mediation, to enhance the profile of the mediation and ensure that it is well-planned, well-resourced in all respects, and that the mediation is undertaken within a fixed time frame;

(b) *Requests* the Chairperson of the Commission to take immediately the necessary steps to enhance its capacity to support the implementation of the recommendations of the AUPD, including the establishment of an appropriate unit within the AU Peace and Security Department, the strengthening of the AU Liaison Office in Sudan and that of the Darfur-Darfur Dialogue and Consultation (DDDC), which has a key role to play in the implementation process, particularly with respect to reconciliation and in engaging the civil society, disseminating the report and facilitating ownership;

(c) *Stresses* the need to pursue efforts to strengthen UNAMID, including the provision of the required force enablers and the strengthening of its civilian component, such as Civil Affairs, Human Rights and the Rule of Law and DDDC, to enable it effectively play its role in support of the peace process;

(d) *Requests* the Chairperson of the Commission to establish an AU High Level Implementation Panel (AUHIP), comprising of former Presidents Thabo Mbeki, Pierre Buyoya, and Gen. Abdulsalami Abubakar, to assist in the implementation of all aspects of the AUPD recommendations, as well as to assist the Sudanese parties in the implementation of the Comprehensive Peace Agreement (CPA) and other related processes, as part of the democratic transformation of the Sudan. The AUHIP will have an initial mandate of one year. The Council requests all concerned, including the Joint Mediation and UNAMID, to extend full and unreserved cooperation to the AUHIP;

(e) *Also requests* the Chairperson of the Commission to undertake consultations with the United Nations Secretary-General and the Secretary-General of the League of Arab States, for the speedy establishment of a Consultative Forum, involving relevant stakeholders and Sudan's neighbouring countries, as well as AU partners, to receive regular reports on the implementation of the present decision and to serve as a coordinating mechanism to support and promote the achievement of the objectives stated in the decision:

12. *Requests* all AU Member States and partners to fully support the implementation of the recommendations of the AUPD and the implementation of the present decision;

13. *Requests* the Chairperson of the Commission to formally transmit the present decision to the Sudanese stakeholders, as well as to the United Nations Security Council and other AU partners, in order to enlist their support and, with the support of the AUHIP, to implement an appropriate outreach strategy, in order to mobilize the broadest support possible for the successful implementation of the recommendations of the AUPD and of the present decision;

14. *Also requests* the Chairperson of the Commission to submit quarterly reports on the implementation of the AUPD recommendations and of the present decision;

15. *Decides* to remain seized of the matter.

Annex III

Letter dated 3 November 2009 from the Chairperson of the African Union Commission addressed to the Secretary-General

[Original: English]

I am writing to you in connection with the meeting of the AU Peace and Security Council (PSC) that took place, at the level of Heads of State and Government, in Abuja, Nigeria, on 29 October 2009, to consider the report and recommendations submitted by the AU High-Level Panel on Darfur (AUPD). As you are aware, the AUPD was established by the PSC in July 2008, to examine the situation in Darfur in depth and submit recommendations on how best the issues of accountability and combating impunity, on the one hand, peace, reconciliation and healing, on the other, could effectively and comprehensively be addressed.

I wish to take this opportunity to express my appreciation to the United Nations Under-Secretary-General for Peacekeeping Operations for his participation, on your behalf, in the meeting and his contribution to the deliberations of the PSC. The United Nations presence in Abuja was a further testimony to the partnership between our two organizations in the promotion of peace, security and stability in Darfur and the Sudan as a whole, and indeed in the entire African continent.

I am forwarding, herewith, the communiqué of the 207th meeting of the PSC together with the AUPD report, for your information and their distribution as documents of the United Nations Security Council. In its communiqué, the PSC endorsed the report of the AUPD and requested me to take a number of steps towards the implementation of the recommendations contained therein, with the support of our partners, in particular the United Nations. Among others, the PSC requested me to establish an AU High-Level Implementation Panel (AUHIP), and to undertake consultations with you and with the Secretary-General of the League of Arab States, for the speedy establishment of a Consultative Forum, involving relevant stakeholders and neighbours of the Sudan to receive regular reports on the implementation of the decision and serve as a coordinating mechanism.

As a follow-up to the PSC decision, I intend to travel to New York, at your earliest convenience and that of the United Nations Security Council, with the Chair of the newly established AUHIP, former President of South Africa, Mr. Thabo Mbeki, and the Commissioner for Peace and Security, Ambassador Ramtane Lamamra. The purpose of this visit will be to brief the Security Council on the report and recommendations of the AUPD and the decision of the PSC, and to consult with you on how best we could pursue the search for peace in Darfur and the Sudan as a whole, in the light of the recommendations of the AUPD. The AU Permanent Observer Mission to the United Nations in New York, through the appropriate channel, will liaise with the President of the Security Council to request the envisaged meeting with the Security Council.

As requested by the PSC, I would be grateful if you could formally transmit the decision of the PSC and the AUPD report to the members of the Security Council, for their information and appropriate action. I would also appreciate it if you could forward to them a copy of the present letter.

I wish to stress the importance of the continued partnership between our two institutions towards the achievement of peace, justice and reconciliation in Darfur, as part of the overall efforts to promote lasting peace in the Sudan as a whole and further the democratic transformation of the country, in line with the vision articulated by the Comprehensive Peace Agreement. I am confident that we can continue to count on the support of the United Nations and on your personal support.

(*Signed*) Jean **Ping**